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Global Women, Private Homes: Reframing Rights for Migrant Domestic
Workers in the United Kingdom

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Abstract

This paper examines the way in which NGOs in the UK have framed rights for migrant domestic workers. It contends that migrant domestic workers entering the UK on the tied Overseas Domestic Worker's Visa have been framed as victims of modern slavery and human trafficking by these groups. This paper critically analyses this approach, arguing that this framework has not served to increase rights for domestic workers, but conversely has enabled the State to present these women as victims who must be excluded for their own protection. Furthermore this approach has shifted responsibility away from the State and onto foreign employers, who are presented as importing human rights violations into Britain. This paper therefore argues for the need to reframe rights for migrant domestic workers, and seeks to formulate a new, human rights-based approach. This approach focuses on highlighting the agency of these women, as well as refocusing responsibility back onto the State to protect human rights. A successful employment of this frame would serve to expand migratory opportunities for domestic workers and reduce the precariousness of domestic labour through the extension of employment protections into the private sphere of the home.

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Introduction

In 1998, migrant domestic workers (MDWs) entering the United Kingdom (UK) with an employer from overseas won the right to change employer and remain in the UK. This right, crucial in ensuring domestic workers could escape from exploitative and abusive employment, was won after years of tireless campaigning by domestic workers and their supporters. Work permits for domestic workers had been phased out in 1979, however the Government continued to make exceptions for domestic workers entering the UK with a wealthy foreign employer¹. This created a 'concession culture', under which domestic workers were admitted under a range of visas, many of which did not legally grant them the right to work in the UK. By the mid-1980s, London was home to several thousand 'illegal' domestic workers who had entered the UK under this system and now found themselves to be undocumented². It was in response to these conditions that MDWs, alongside their supporters, began to organise collectively to demand rights from the British government. Particularly, it was the group Waling-Waling that pushed for reforms to this visa system. Waling-Waling was established in 1983 at the Commission for Filipino Migrant Workers (CFMW) in West London, and consisted of domestic workers and their supporters³. The group began to campaign for regular immigration status and the right to change employer.

In 1998, thanks directly to the campaigning of these domestic workers and their supporters, the Labour Government announced plans to regularise the situation of MDWs. Domestic workers entering the UK with their foreign employer were granted the right to change employer whilst in the UK⁴. MDWs were able to apply for a twelve-month renewable visa, and workers who had been in

¹ B. Anderson, 'Mobilising Migrants, Making Citizens: Migrant Domestic Workers as Political Agents', *Ethnic and Racial Studies*, 33 (2010) 62.

² B. Anderson, 'Migrant Domestic Workers: Good Workers, Poor Slaves, New Connections', *Social Politics*, 22 (2015) 638.

³ Anderson, 'Mobilising Migrants, Making Citizens', 61.

⁴ Anderson, 'Mobilising Migrants, Making Citizens', 67.

the UK for five years were able to apply for permanent leave to remain, and thus had a direct path to citizenship⁵. Moreover, the Government offered the opportunity for regularisation to those workers who had entered the UK on the previous system, in what was effectively an amnesty for undocumented MDWs⁶.

In April 2012 these gains were reversed, and domestic workers entering with a foreign employer on the Overseas Domestic Workers Visa (ODWV) were stripped of the right to change employer. Their visa was limited to a six month, non-renewable term, thereby removing any direct path to settlement and citizenship through domestic work⁷. These changes have created conditions for an upsurge in campaigning and media attention on the issue, with stories of domestic workers being held in slave-like conditions being highlighted by campaigners and catching the attention of the press. In spite of this outpouring of criticism the visa system has stayed in place, and MDWs entering on the ODWV, the only direct means of entrance for domestic workers, continue to have their immigration status tied directly to their employer.

The experience of MDWs in the UK is not unique. It is estimated that there are up to one hundred million domestic workers worldwide, the vast majority of who are women⁸. The experience of MDWs today is impacted by the way in which immigration regimes regulate the lives of women moving around the world in search of work. Their lives are also shaped by employment regimes that see little value in domestic labour and fails to regulate it as 'real work'. Domestic workers are amongst the lowest paid of all groups, often earning below the national minimum wage and working in the informal sector. Domestic work can therefore be a highly irregular and

⁵ *ibid.*

⁶ *ibid.*

⁷ UK Government, 'Work Visas: Domestic Workers in a Private Household Visa', GOV.UK. April 6 2016. Accessed August 1, 2016. <https://www.gov.uk/domestic-workers-in-a-private-household-visa/overview>.

⁸ N. V. Yinger, 'Feminisation of Migration', *Population Reference Bureau*, December 2006.

precarious form of labour⁹. This kind of work continues to be highly gendered, as the reproductive service performed, such as cleaning, cooking and caring for children and the elderly, are regarded as innately feminine, as ‘women’s work’, and are grossly undervalued in comparison to ‘productive’ work performed largely in the public sphere¹⁰. The lives of domestic workers both in the UK and around the world are therefore often characterised by restrictive immigration statuses and poor working conditions.

Literature Review

Much has been written about the presence and situation of MDWs on a global level. Scholars of migration have begun to consider how gender specifically shapes migratory experiences. The increase in literature on MDWs has therefore come alongside the recognition of the feminisation of migration. Previously the vast majority of female migrants migrated for the purpose of family reunification¹¹. The classic migration model in the global North is the male migrant entering a foreign labour market, which is characterised by a traditional family system. Under policies of family reunification, the male migrant would bring his wife and family with him to his country of employment¹². This model is based on the assumption that only men work in the labour market, and does not allow for the changes, both in sending and receiving countries, that have caused large numbers of women to migrate and created the demand we now have for domestic and care work. Changes in migratory patterns now mean that more women are moving on their own, rather than to join their husbands or family members¹³.

⁹ B. Anderson, ‘Migration, Immigration Controls and the Fashioning of Precarious Workers’, *Work, Employment and Society*, 24 (2010) 304.

¹⁰ B. Ehrenreich and A. Russell Hochschild, ‘Introduction’, in B. Ehrenreich and A. Russell Hochschild (ed.), *Global Women: Nannies, Maids and Sex Workers in the New Economy* (Holt: New York, 2002) 5.

¹¹ Yinger, ‘Feminisation of Migration’.

¹² *ibid.*

¹³ *ibid.*

Structuralist works have presented a feminist interpretation of structuralist migration theories to illuminate the experiences of MDWs. The work of Saskia Sassen is indicative of this approach. Sassen's work has highlighted how migration trends cannot be examined in isolation, but rather must be considered as an aspect of global trends with push and pull factors working in conjunction. Sassen conceptualises these as 'counter-geographies of globalisation', due to the ways in which they map onto the major dynamics that compose globalisation¹⁴. Integral to this are factors in sending countries that impact the women's decisions to migrate. One of the most significant of these is opportunity, or lack thereof, in the sending country due to poverty and government debt. Debt has become a constant feature of the developing world since the 1980s, and this has had a particular gendered effect¹⁵. Programmes imposed on the developing world by the IMF and the World Bank, including Structural Adjustment Programmes and Structural Adjustment Loans had dramatic repercussions for employment and state spending. These policies therefore have led to high unemployment and cuts in social and welfare programmes, which disproportionately impact women and children¹⁶. As Cynthia Enloe puts it, "*When a woman from Mexico, Jamaica or the Philippines decides to emigrate in order to make money as a domestic servant, she is designing her own international debt politics*"¹⁷." The decision of women to migrate in search of work is therefore inextricably tied to macro level processes of globalisation and global finance.

The factors that pull migrants to receiving countries are equally impacted by both global as well as local factors. Sassen points to the way economic restructuring associated with the rise of financial services in global cities, such as London and New York, has led to the polarisation of wealth resulting in the growth of both high-level and low-level forms of employment. This

¹⁴ S. Sassen, 'Women's Burden: Counter-Geographies of Globalisation and the Feminisation of Survival', *Journal of International Affairs*, 53 (2000) 503.

¹⁵ Sassen, 'Women's Burden', 511.

¹⁶ *ibid.*

¹⁷ C. H. Enloe, *Bananas, Beaches and Bases: Making Feminist Sense of International Politics*, (University of California Press: Los Angeles, 1989) 185.

polarisation has in turn led to the re-emergence of a 'serving class'¹⁸. These poorly paid service sector jobs serve to support those who are highly paid, and, as such, are integral to the functioning of global cities. For example, large office buildings could not operate efficiently and effectively without janitors, cleaners and security guards. Similarly individuals and couples working in high-paid jobs are supported in their lifestyle by people who clean their home, care for their children and also often care for their elderly relatives. It is the demand for these jobs that act as a pull for migrant workers¹⁹. Furthermore, the nature of domestic work, as an aspect of the informal economy, makes it an accessible form of employment for people without qualifications recognised in the UK or language proficiency.

A structural analysis is also evident in the literature on global care chains. Ehrenreich and Hochschild's work focuses less specifically on global cities and financial hubs, and more on the rise of middle-class women into the workforce in developed countries. In the absence of a redistribution of domestic labour between partners, as well as the lack of state care for children and the elderly, many middle-class women have succeeded in entering the labour force by turning over work within the home to lower-income, often migrant, women²⁰. Equally, women who migrate in search of domestic work often leave behind children and elderly who need to be cared for. This becomes the responsibility of other extended members of the family, or of other lower-income women, creating a global care chain²¹. The care deficit in the global North, which creates the pull for domestic and care workers, has therefore arguably created a care deficit in the global South for the children of migrants and the elderly. Structuralist literature has therefore focused on migratory processes, and

¹⁸ S. Sassen, 'Two Stops in Today's New Global Geographies: Shaping Novel Labour Supplies and Employment Regimes', *American Behavioural Scientist*, 52 (2008) 481.

¹⁹ *ibid.*

²⁰ Ehrenreich and Hochschild, 'Introduction', 2.

²¹ Ehrenreich and Hochschild, 'Introduction', 4.

helped us to understand the micro and macro structures that have created conditions where vast numbers of women are moving around the world to work as domestic workers.

This literature has taken a global approach and examined the movement of domestic workers as a global phenomenon, however scholars have also undertaken country-specific studies of domestic work. The attention of many academics and activists has been on the treatment of MDWs in the Gulf States, where the *kafala* system sees migrant workers in all employment areas tied to their employer, and in Singapore, where stories of Indonesian maids falling to their deaths whilst cleaning the windows of high-rise apartments due to lack of employment and safety protections are common²². However the exploitation of domestic workers is not limited to states well known for their human rights abuses against migrant workers. In Canada, the existence of a Live-In Caregiver Program, which sees domestic workers specifically recruited to live and work in private households, has led to a large body of literature discussing the rights of MDWs. The work of Abigail Bakan and Davia Stasiulis explores Canada's treatment of MDWs, finding many similarities between the treatment of domestic workers in countries of the Gulf and Singapore, and the liberal democratic state of Canada²³. As Joseph Carens suggests, MDWs are "*hard to locate on the map of democracy*" in Canada, due to lack of rights afforded to them as temporary workers²⁴. This work has served to conceptualise Canada's migrant worker system and the exclusionary form of citizenship it promotes.

²² See N. Varia, *Maid to Order: Ending Abuses Against Migrant Domestic Workers in Singapore*. New York: Human Rights Watch, 2005. R. Begum, "*I Already Bought You*": *Abuse and Exploitation of Female Migrant Domestic Workers in the United Arab Emirates*. New York: Human Rights Watch, 2014. R. Begum, "*I Was Sold*": *Abuse and Exploitation of Migrant Domestic Workers in Oman*. New York: Human Rights Watch, 2016.

²³ A. Bakan and D. K. Stasiulis 'Introduction' in A. Bakan and D. K. Stasiulis (ed.), *Not One of the Family: Foreign Domestic Workers in Canada*, (University of Toronto Press: Toronto, 1997) 5.

²⁴ J. H. Carens, 'Live-in Domestic, Seasonal Workers, and Others Hard to Locate on the Map of Democracy', *The Journal of Political Philosophy*, 16 (2008) 419.

Literature relating to the UK is less developed than countries such as Canada, partly due to the fact the UK does not have a specific system for recruiting domestic workers to work in private households. Research has therefore largely focused on the experience of women entering on the ODWV. Bridget Anderson has largely taken the lead in researching MDWs in the UK. Anderson's work has examined different aspects of domestic workers' experiences, including power relations in the often maternalistic relationship between employer and employee; the way in which race and ethnicity shapes demand for domestic workers; and the political organisation of domestic workers, specifically in relation to the campaign of the 1990s which secured the right to change employer²⁵. Anderson's work provides a point from which to further explore the current climate and campaigns relating to the situation of migrant domestic workers in the UK.

Methodology and Argument

This paper will employ gendered analysis, focusing on the way in which gender, intersecting with migration status, shapes the lives of MDWs. Whilst MDWs face many of the same issues as other migrant workers, such as an unstable migration status, the threat of deportation, and lack of access to legal recourses, the distinct problems that arise from being employed in a feminised sector in a private household make the situation of MDWs unique in many ways. Recognising that not all domestic workers are female or chose to identify as female, this paper will nonetheless address the issue of MDWs through a feminist lens and a focus on women's rights, given the very gendered nature of domestic labour. Domestic work is a gendered form of labour not simply because it is largely carried out by women, but rather because the tasks and duties associated with domestic work are considered innately feminine, and as 'women's work'. This cultural understanding of domestic

²⁵ See B. Anderson, *Doing the Dirty Work: The Global Politics of Domestic Labour* (Zed Books: London, 2000), B. Anderson, 'A Very Private Business: Exploring the Demand for Migrant Domestic Workers', *European Journal of Women's Studies* 14 (2007) 247-264, B. Anderson, 'Mobilising Migrants, Making Citizens: Migrant Domestic Workers as Political Agents', *Ethnic and Racial Studies*, 33 (2010) 60-74.

work as women's labour has served to exclude MDWs from rights and protections afforded to workers in other spheres. Feminist writers have pointed to the way in which the burden of domestic labour has served to maintain patriarchal societal relations by consigning women to the private sphere and placing little value on their labour there²⁶. This paper is therefore underpinned by a feminist understanding of domestic labour as real work, which has been consistently undervalued and dismissed by society.

As discussed, a number of scholars have considered globalised domestic labour as a phenomenon, examining the structural factors that have led to millions of women moving around the world to work in private households. This paper examines campaigns for justice for MDWs, and asks how rights for domestic work should be best framed and understood so as to enable MDWs to advance and improve their situation. This paper will therefore examine the ways and means by which domestic workers and their supporters have made claims to rights in the UK, and the frames that have been employed in this process. This is a growing area of literature, with many scholars focusing on the means by which domestic workers and their supporters were able to push a new ILO Convention Concerning Decent Work for Domestic Workers (No.189). Jo Becker has analysed the processes that led to the development of the ILO Convention, focusing on the role of trade unions and transnational alliances between domestic workers' groups²⁷. Similarly Helen Schwenken focuses on the RESPECT Network, a network of domestic worker groups across the European Union, highlighting the means by which domestic workers overcame barriers to organisation²⁸.

This paper will therefore build on this work specifically in the context of the UK, focusing not just on domestic worker groups themselves but also drawing in other actors in the human rights

²⁶ Enloe, *Bananas, Beaches and Bases*, 315.

²⁷ J. Becker, *Campaigning for Justice: Human Rights Advocacy in Practice*, (Stanford University Press: Stanford, 2013) 44.

²⁸ H. Schwenken, 'RESPECT For All: The Political Self-Organisation of Female Migrant Domestic Workers in the European Union', *Refuge*, 21 (2003) 45-52.

ecosystem, namely other NGOs fighting for the rights of MDWs. Methodologically, it will therefore examine reports, statements and petitions from these NGOs to infer what frames are being employed. It will argue that attempts to gain rights for MDWs since the 2012 visa changes have been dominated by the discourse of modern slavery and human trafficking. In a hostile environment to migration, the framework of modern slavery and human trafficking has appeared to offer some hope for the abused and vulnerable migrants. However, in reality, this narrative has served to shut down space for domestic workers to claim rights as legitimate workers and has furthered their exclusion. This paper will therefore argue for a new, human rights-based approach, which highlights the strength and value of MDWs, and places responsibility back onto the State to protect workers in private households. This understanding of domestic work would force governments to recognise the nexus between restrictive immigration policies and vulnerability for migrant women, and ensure that domestic workers are treated and protected as real workers who contribute to society.

Chapter One will outline the issues faced by MDWs in the UK both in relation to their immigration status and the rights under employment law, highlighting the restrictive immigration policies and lack of employment protections that leave MDWs unable to fully exercise their rights. Chapter Two considers what the response to these issues has been from domestic workers and their supporters, arguing that this response has relied heavily on framing MDWs as victims of modern slavery. It will explore the political structures, both domestic and international, which have created this new focus on trafficking and modern slavery, and critique this approach. Chapter Three argues for a new framework, and suggests we must move away from a portrayal of domestic workers as victims, and formulate a new approach which is grounded in the principles of human rights.

Chapter One: Exemptions and Exclusions

Migrant domestic workers both in the UK and around the world are subject to a range of human rights abuses, including violations of labour rights, gender-related abuses and vulnerabilities relating to immigration status. Although many of these issues are applicable to both migrant and non-migrant domestic workers, MDWs face particular concerns, and generally migrant workers are at a face risk of abuse and mistreatment²⁹. MDWs face intersectional discrimination relating to gender, ethnicity, employment and immigration status. The UN Committee on Migrant Workers has noted that MDWs face risk at all stages of the migration process, from recruitment, in transit and during employment³⁰. These risks, and the vulnerability of domestic workers to human rights abuses, are not inevitable, but rather are constructed by government policies that exclude migrant domestic workers from entry and provide little in the way of employment protections.

This chapter will explore the situation of MDWs in relation to their rights under international human rights law, their relationship to the UK immigration system and their rights and protections, or lack thereof, under UK employment law. In doing so, it seems to highlight the way in which domestic workers are excluded from access to the UK labour market by an immigration regime which sees little value in their work, and exempt from many of the basic labour rights protections afforded to other workers due to their operation in the private sphere.

Human Rights Framework

We must first examine the relevant human rights framework within which MDWs in the UK are operating. The UK is party to a number of human rights treaties and therefore has a variety of

²⁹ United Nations, Committee on the Protection of the Rights of All Migrant Workers and Members of their Families, *General Comment No.1 on Migrant Domestic Workers*, CMW/C/GC/1. 23rd February 2011, paragraph 7.

³⁰ *ibid.*

obligations under international human rights law. The UK has ratified the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), which both contain a number of provisions that relate to the situation of MDWs³¹. Issues relating to labour rights, such as the right to work (Article 6), the right to a fair wage (Article 7) and the right to organise (Article 8) are outlined in the ICESCR³², and the ICCPR contains the right not to be subjected to slavery or forced labour (Article 8)³³. Equally, common Article 2 prohibits discrimination on the basis of gender or any other status. The UK has also ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which is particularly relevant as the vast majority of MDWs are women³⁴. The CEDAW Committee has commented on the particular status of female migrant workers in General Recommendation No. 26. The Recommendation stresses that migrant women should not be discriminated against on the basis of the sex or on the basis of their migration status, however the Recommendation is not legally binding³⁵. The UK is also party to the European Convention on Human Rights, which contains provisions relating to both labour rights and gender equality norms, as well as Article 4 which prohibits slavery, servitude and forced labour³⁶.

³¹ Office of the High Commissioner for Human Rights, 'Ratification Status for United Kingdom of Great Britain and Northern Ireland'. United Nations Human Rights. Accessed 24 May 2016. http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=185.

³² United Nations, General Assembly, *International Covenant on Economic, Social and Cultural Rights*, New York: 16 December 1966, United Nations Treaty Series, vol. 993, no. 14531.

³³ United Nations, General Assembly, *International Covenant on Civil and Political Rights*, New York: 16 December 1966, United Nations Treaty Series, vol. 999, no. 14668.

³⁴ Office of the High Commissioner, 'Ratification Status'.

³⁵ United Nations, Committee on the Elimination of Discrimination Against Women, *General Recommendation No. 26 on Women Migrant Workers*, CEDAW/C/2009/WP.1/R. 5 December 2008, paragraph 2.

³⁶ Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14*, Strasbourg: 4 November 1950, Council of Europe Treaty Series, no. 5.

The UK has failed to ratify the UN Convention on the Rights of Migrant Workers and Their Families (CMW)³⁷. This convention has one of the lowest rates of ratification amongst all human rights conventions, and has so far largely been ratified by migrant sending as opposed to receiving countries³⁸. Along with this UN convention, the International Labour Organisation (ILO) has implemented a number of conventions relating to the rights of migrant workers. The most significant of these for this paper is the ILO Convention 189 Concerning Decent Work for Domestic Workers³⁹. The UK abstained from voting on ILO Convention 189 and has refused to ratify the convention. This illustrates how the UK has taken a largely negative attitude towards the rights of migrant workers and non-citizens more generally, in spite of its espoused commitment to international human rights.

Immigration Policies

Domestic workers who enter the UK from outside of the EU are subjected to visa regulations. In 2010 the UK government introduced a new immigration system for all people seeking to enter the UK from outside of the EU, based on a five tier visa system, with the aim of managing the flow of migrants coming to the UK to live and work⁴⁰. Under this system Tiers One, Two and Five are paid and voluntary work visas, which allow people to live and work in the UK under certain conditions⁴¹. Tier One visas are reserved for people with ‘exceptional talent’, investors and entrepreneurs, and Tier Two visas require the applicant to have been offered a skilled

³⁷ Office of the High Commissioner, ‘Ratification Status’.

³⁸ *ibid.*

³⁹ International Labour Organisation, *Convention Concerning Decent Work for Domestic Workers, C189*, Geneva: 16th June 2011.

⁴⁰ Home Office, *A Points Based System: Making Migration Work for Britain*, London: UK Government, 2006, 1.

⁴¹ B. Anderson, Bridget, *Us and Them? The Dangerous Politics of Immigration Control*, (Oxford University Press: Oxford, 2013) 58.

job in the UK⁴². The third tier of the visa system was envisioned as a tier for unskilled migrants, however when the system was operationalised the government decided there was no need for unskilled migration from outside of the EU⁴³. As domestic work is classified as unskilled labour by the UK government, nationals from outside of the EU are not able to apply for work visas through this tiered system.

The only direct channel by which MDWs may enter the UK from outside of the EU is the Overseas Domestic Workers Visa (ODWV). This visa category is reserved for domestic workers, classified as cleaners, chauffeurs, nannies, cooks and others providing service in a private household, who come to the UK accompanying a foreign employer⁴⁴. This visa was therefore created not necessarily as a means to allow low-income domestic workers to work in the UK, but rather as a concession for high net-worth migrants. In a debate in the House of Lords, one peer stated: *“Looking at our national interests, if wealthy investors... with a potential benefit to our economy were unable to be accompanied by their domestic staff they might not come here at all but take their money and skills to other countries⁴⁵.”* This visa route therefore falls outside the points-based system. The Home Office has stated that as the sponsoring employer is not necessarily permanently based in the UK, the ODWV does not fall under the main immigration system⁴⁶. Prior to April 2012 MDWs on this visa were eligible to stay in the UK for 12 months and then to extend

⁴² United Kingdom Government, ‘Visas and Immigration: Work Visas’, GOV.UK. 12 August 2016. Accessed 15 August 2016. <https://www.gov.uk/browse/visas-immigration/work-visas>.

⁴³ *ibid.*

⁴⁴ United Kingdom Government, ‘Visas and Immigration: Domestic Workers in a Private Household’, GOV.UK. 6 April 2016. Accessed 10 August 2016. <https://www.gov.uk/domestic-workers-in-a-private-household-visa/overview>.

⁴⁵ Anderson, ‘Good Workers, Poor Slaves’, 139.

⁴⁶ United Kingdom Government, ‘Visas and Immigration’.

their visa whilst in the country⁴⁷. Domestic workers who had remained in the UK for five years were able to apply for permanent settlement. On this visa MDWs were entitled to change their employer whilst in the UK, on the condition that they continued to work in the domestic sector.

Changes to the ODWV in April 2012 have dramatically altered this system. MDWs are now limited to a maximum stay of six months in the UK, which they are not able to extend and are therefore not able to claim permanent residence. Changes to the visa have also removed the right to change employer, effectively tying a domestic workers' immigration status to their employer. MDWs who leave their employment due to poor working conditions or abuse must leave the country or become undocumented, and are then exposed to the vulnerabilities that this state produces. These visa changes have served to increase the vulnerability of domestic workers and led to higher incidences of abuse. Kalayaan, an advocacy group working with domestic workers in the UK, has documented this increase in abuse. Their 2014/15 statistics show that 68% of domestic workers who entered the UK on the post-2012 visa system were not allowed out of the house unaccompanied, compared with 38% on the previous visa system⁴⁸. Similarly 38% received no pay at all, compared with 14% of domestic workers on the old visa⁴⁹. These statistics show how every incidence of exploitation and abuse of MDWs have become higher with the introduction of the new visa system, which has significantly increased the degree of control that employers are able to exert over their employees.

For domestic workers in a diplomatic household, the situation is potentially even worse. Prior to the 2012 visa changes, MDWs who worked for a diplomat could move positions to work for another diplomat in the same mission⁵⁰. Under the new system, MDWs can only work for one

⁴⁷ S. Mullally and C. Murphy, 'Migrant Domestic Workers in the UK: Enacting Exclusions, Exemptions, and Rights', *Human Rights Quarterly*, 36 (2014) 413.

⁴⁸ Kalayaan, *Annual Report and Financial Statements: April 2014-March 2015*, London: Kalayaan, 2015, 7.

⁴⁹ *ibid.*

⁵⁰ I. Leghtas, *Hidden Away: Abuses Against Migrant Domestic Workers in the UK*. London: Human Rights Watch, 2014, 17.

diplomat and must leave the UK with their employer if not before. Furthermore, they are no longer entitled to apply for permanent settlement, even if they have been in the UK for five years⁵¹. Diplomats and their families enjoy diplomatic immunity, meaning they are exempt from the jurisdiction the British Courts in criminal, civil and administrative matters⁵². This dramatically increases the difficulty of holding abuses employers accountable. Kalayaan has reported significantly higher levels of abuse against domestic workers working in diplomatic households than non-diplomatic households, including sexual, verbal and physical abuse⁵³.

Another potential route for domestic workers to enter the UK is the au pair system. Au pairs are eligible to enter on the Tier Five Youth Mobility Scheme, which allows au pairs and other categories of people to remain in the UK for up to two years⁵⁴. However this visa category is limited to people from selected countries, and only nationals from Australia, Canada, Hong Kong, Japan, Monaco, New Zealand, the Republic of Korea and Taiwan may apply for a Tier Five Youth Mobility Scheme visa⁵⁵. These countries are relatively high-income and are not the largest sending countries for MDWs, which are mostly nations of South and Southeast Asia and Africa. To qualify for an au pair visa, migrants must also have savings of at least £1,890 and be aged 18-30⁵⁶. The need to have a significant amount of saving is likely to exclude the vast majority of MDWs. This visa route is therefore not a viable way to enter the UK for the majority of MDWs, who come from outside of these qualifying countries and are unlikely to hold this amount of savings.

⁵¹ *ibid.*

⁵² *ibid.*

⁵³ Leghtas, *Hidden Away*, 18.

⁵⁴ United Kingdom Government, 'Tier 5 (Youth Mobility Scheme) Visa', GOV.UK. 30 June 2016. Accessed 2 July 2016. <https://www.gov.uk/tier-5-youth-mobility>.

⁵⁵ *ibid.*

⁵⁶ *ibid.*

Other MDWs in the UK may be on a range of visa statuses. Nationals from member states of the EU may be working as domestic workers, as they currently continue to have the right to live and work in the UK. However, restrictions on freedom of movement were at the very heart of the Brexit vote and therefore may change dependent on the deal struck between the UK and the Union. MDWs may be in the UK on a tourist visa or a student visa, or may have overstayed one of these visas and be working in breach of their visa conditions. Unlike data for the number of ODWVs issued per year, we have no reliable data as to the numbers of people who are working as domestic workers in the UK via these other potential routes due to the informal nature of domestic work.

Employment Protections

The reproductive and gendered nature of domestic work means that this work has often not been recognised as a legitimate form of labour, nor has it been covered by employment law. In the UK domestic workers are exempt from many of the basic labour protections afforded to other sectors of the labour market. Domestic workers are not covered by the weekly forty-eight hour limitation on working hours set out in the 1998 Working Time Regulations, and are not covered by restrictions on the duration of night work⁵⁷. Equally, the Health and Safety Executive has no remit to inspect private households and therefore domestic workers are not covered by health and safety provisions laid out in the 1974 Health and Safety Act⁵⁸. The Minister for Employment Relations stated that health and safety provisions would be “*quite an intrusive law*” that would give health and safety inspectors a “*new right to visit millions of homes*”⁵⁹. This reluctance to extend labour

⁵⁷ Fudge, Judy and Kendra Strauss, 'Unfree Labour and the Construction of Domestic Servitude' in Catheryn Costello and Mark Freehand (ed.) *Migrants at Work: Immigration and Vulnerability in Labour Law* (Oxford University Press: Oxford, 2014) 167.

⁵⁸ *ibid.*

⁵⁹ Mullally and Murphy, 'Migrant Domestic Workers in the UK', 415.

protections to domestic workers based on the private nature of their work prevents domestic work being treated as ‘real work’.

Alongside these issues, domestic workers who live-in and are treated as a “*member of the family*” are not entitled to the national minimum wage⁶⁰. Therefore MDWs who enter on the ODWV, who must live-in with their employers as an condition of their visa, are not entitled to be paid the national minimum wage. Regarding this, the UK Border Agency stated, “*It is not for us to say who is entitled to the National Minimum Wage*”⁶¹.” This notion of being treated as a ‘member of the family’ is highly problematic, and serves to reinforce the notion that domestic workers are not really workers, but rather just ‘helpers’ or extended members of the family, and this reduces their ability to claim labour rights. This is illustrated by the case of Ms. Julio v. Ms Jose heard at the UK Employment Appeal Tribunal. In this case, the Tribunal accepted that Ms. Julio had not at any time been paid the agreed monthly salary, but found that she was treated as “*a member of the family, in particular as regards to the provision of accommodation of meals and the sharing of tasks and leisure activities*”⁶².” The family member exemption from the national minimum wage was therefore found to be applicable to Ms. Jose, whose claim was rejected. Cases such as these illustrate the failings of UK employment law to protect domestic labour as a legitimate form of work.

In the context of EU legislation, domestic work is also largely excluded from basic labour protections. The EU Framework Directive 89/391/EEC provides that a worker is “*any person employed by an employer, including trainees and apprentices but excluding domestic servants*”⁶³.”

⁶⁰ *ibid.*

⁶¹ Anderson, *Us and Them?*, 175.

⁶² *Julio & Ors v. Jose & Ors*, [2011] Appeal No. UKEAT/0553/10/DM, 20.

⁶³ Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work, (1989) OJ L 183/1, article 3 (a). Note here the use of the phrase *servants* as opposed to *workers*. Language such as this further serves to delegitimise domestic work by suggesting domestic workers are not real workers, but merely servants or helpers.

Therefore, all health and safety directives that followed the Framework Directive, including the Working Time Directive, exclude domestic workers⁶⁴. Similarly to the EU, several ILO instruments permit the exclusion of domestic workers from their remit under the scope of “flexibility clauses.” Conventions including the Protection of Wages Convention No.95 (1949), the Night Work Convention No.181 (1997) and the Maternity Protection Convention No. 183 (2000), all of which have been ratified by the UK, contain flexibility clauses that can be used after consultation with organisations of workers and employers⁶⁵. These mean that governments can exclude domestic workers from the provisions of these conventions. Furthermore, as the UK has failed to ratify ILO Convention 189, which takes into consideration the specific nature of domestic work, it lacks legislation specifically tailored to domestic labour that takes into consideration the nature of this employment.

Employment protections for domestic workers are therefore severely limited. Furthermore, as we have seen, the UK has severely restricted the means by which domestic workers may enter the country from outside the EU. In doing so, it has created conditions for increasing numbers of irregular migrants working in the domestic and care sectors. Research on irregular migration in the UK is significantly less developed than the literature on the US, and estimates of the numbers of irregular migrants and their sectors of employment are limited. Researchers at the London School of Economics estimated the total of irregular migrants in the UK to be 618,000 in 2007, however estimates since this have suggested the figure could be over one million⁶⁶. This number includes migrants who entered the UK illegally, overstayers and children born to irregular migrants. The

⁶⁴ V. Mantouvalou, ‘Human Rights for Precarious Workers: The Legislative Precariousness of Domestic Labour’, *Comparative Labour Law and Policy Journal*, 34 (2012) 144.

⁶⁵ *ibid.*

⁶⁶ I. Gordon, K. Scanlon, T. Travers and C. Whitehead, *Economic Impact on the London and UK Economy of an Earned Regularisation of Irregular Migrants in the UK*, London: Greater London Authority, 2009, 6.

nature of domestic work as part of the informal economy makes it an attractive source of employment for irregular migrants, as it requires few formal qualifications and remuneration can be paid cash-in-hand⁶⁷. It is therefore vital to consider what, if any, protections are available to undocumented migrants in this sector and in the UK at large.

Employment contracts made by undocumented workers are invalid under UK law. This was illustrated in the case of *Allen v. Houna*, heard at the Employment Appeal Tribunal (EAT) in 2011. Ms. Houna was a MDW who overstayed her tourist visa and continued to work as a domestic worker⁶⁸. She was then seriously mistreated and unfairly dismissed from her work. However, due to her irregular status in the UK, the EAT ruled that her employment contract was invalid, and thus her claims for unfair dismissal, breach of contract, unpaid wages and holiday pay could not be enforced⁶⁹. Only her claim of discrimination was allowed, however the Court of Appeals was not willing to accept this claim as Ms. Houna was aware that her status in the UK was illegal.

The labour rights of undocumented migrants occupies an uncertain position under international human rights law, as even the Migrant Workers Convention recognises states' sovereignty over immigration control⁷⁰. All human rights conventions, including the CMW, fail to list 'immigration status' as a protected category against discrimination⁷¹. However, the Inter-American Court of Human Rights has issued an advisory opinion stating that excluding undocumented migrants from labour rights breaches international principles of equality before the

⁶⁷ European Union Agency for Fundamental Rights, *Migrants in an Irregular Situation Employed in Domestic Work: Fundamental Rights Challenges for the European Union and Its Member States*, Luxembourg: European Union Agency for Fundamental Rights, 2011, 15.

⁶⁸ *Allen (Nee Aboygade-Cole) v. Houna*, [2011] UKEAT/0326/10/3103, 61.

⁶⁹ *ibid.*

⁷⁰ L. Berg, 'At the Border and Between the Cracks: The Precarious Position of Irregular Migrant Workers Under International Human Rights Law', *Melbourne Journal of International Law*, 8 (2007) 3.

⁷¹ Berg, 'At the Border and Between the Cracks', 17.

law and non-discrimination⁷². As *jus cogens* principles this decision may have a dramatic impact in ensuring that undocumented workers cannot be discriminated against in matters of employment based on their immigration status.

Despite limited research on the extent of undocumented migration to the UK, political rhetoric has created increasing hostility towards ‘illegal’ migrants. The 2014 Immigration Act was designed to create a hostile environment for undocumented immigrants in the UK. It aims to do this by restricting the ability of irregular migrants to access the labour market, rent accommodation and access basic services such as the National Health Service⁷³. When employing someone to work in a private household the British government requires employers to check if that person is eligible to work in the UK⁷⁴. A person who employs someone without the legal right to work in the UK can face a fine of up to £20,000 and up to two years imprisonment for knowingly hiring an employee who does not have a right to work. These laws have been presented as a means of protecting UK security and safeguarding access to the national labour market. However, under these conditions irregular migrants are extremely unlikely to report labour violations due to fear of deportation. Increasingly the UK’s borders have moved inward, and the number of in-country removals, as opposed to removals at the border, has dramatically increased in recent years⁷⁵. This immigration policing of the interior has served to turn the police force and employers into immigration officers, and produced vulnerability for many female migrants who have no way to access the UK through regular migration channels and no recourse in instances of abuse.

⁷² *Advisory Opinion on Juridical Condition and Rights of the Undocumented Migrants*, OC-18/03, Inter-American Court of Human Rights, 17 September 2003.

⁷³ Immigration Act 2014 s (3).

⁷⁴ United Kingdom Government, ‘Employing People: Legal Right to Work’, GOV.UK. 22 July 2016. Accessed 2 August 2016. <https://www.gov.uk/legal-right-work-uk>.

⁷⁵ Anderson, *Us and Them?*, 119.

The Government has also expanded its means of tracking down undocumented migrants living in the UK. In 2013, the Home Office employed a van to drive across the country with a poster stating, *“In the UK illegally? Go home or face arrest”*⁷⁶. Though widely criticised, and ultimately banned by the Advertising Standards Agency, the poster is largely consistent with the tone of the political rhetoric surrounding immigration, which has focused on reducing net migration and criminalising undocumented migrants. Hostility towards migrants has been seen on both sides of the political divide, as both Eurosceptic Tories and disgruntled Labour supporters have defected to UKIP, the far-right nationalist party. The vote for Britain to leave the European Union was driven by concerns over immigration to an extent that was unexpected by those on the Left. The tenuous claim that Turkey is on the brink of joining the Union, giving 75 million people, mostly Muslims, the ability to move freely into the UK, was consistently repeated by the Leave campaign and highlights the focus on preventing further large-scale migration to the UK⁷⁷. The Brexit vote has largely been read as a backlash against the impacts of globalisation and of immigration and is reflective of the current state of hostilities towards migrants in Britain.

The state of Britain’s immigration system is uncertain following Brexit, and the status of free movement to the UK from EU member states will be dependent upon the deal that is struck between the EU and its leaving member. There remains potential for an entire shake-up of the UK’s immigration system if a curb on freedom of movement becomes part of Britain’s exit deal. Currently, both the current UK immigration system and employment regime leave domestic workers unable to exercise basic rights. We must therefore consider the ways in which domestic workers and their supporters may be able to frame their concerns so as to provide MDWs with greater rights and protections.

⁷⁶ D. Casciani, ‘Home Office ‘Go Home’ Adverts Banned by Watchdog’. BBC News. 9 October 2013. Accessed 10 August 2016. <http://www.bbc.com/news/uk-24452551>.

⁷⁷ BBC News, ‘EU Referendum: Row Over Turkey’s Membership Bid Escalates’. BBC News. 24 May 2016. Accessed 10 August 2016. <http://www.bbc.com/news/uk-politics-eu-referendum-36353013>.

Chapter Two: Modern Slaves

Migrant domestic workers in the UK therefore face conditions where they are likely to face human rights abuses due to both an immigration system which ties them to their employer if entering on the ODWV and provides no other legal avenue to entry, and an employment regime which does not grant domestic workers basic protections afforded to other categories of worker operating in the public sphere. In response to these conditions, MDWs and their supporters have campaigned and advocated for the government to do more to protect domestic workers. In doing so, they have found themselves in conflict with a public and political mood which is largely unsympathetic to the plight of migrants.

This chapter seeks to explore the ways in which domestic worker groups and their supporters have attempted to respond to these issues and frame rights for MDWs. It will do so by examining the work of non-governmental organisations (NGOs) who have campaigned and advocated on this issue. It will argue that these NGOs have attempted to frame domestic workers as victims of human trafficking and modern slavery. However, the inherently problematic nature of this paradigm has meant that little progress has been made in further protecting the rights of MDWs in the UK.

The Role of Non-Governmental Organisations

The work of NGOs is crucial to the operation of the international human rights system. NGOs play a major role in the human rights system by documenting and reporting on human rights abuses, advocating towards governments and international bodies and issuing recommendations for ways to better protect human rights. These organisations translate international rights into local justice and serve as the intermediary between the State and rights-holders⁷⁸. NGOs often have the

⁷⁸ S. Engle Merry, 'Transnational Human Rights and Local Activism: Mapping the Middle', *American Anthropologist*, 108 (2006) 38.

power to make issues heard and create both awareness and change through their work. We must therefore consider how NGOs advocating for the rights of MDWs have framed their concerns. The concept of ‘framing’ was developed by social movement theorists in order to analyse how and why ideas resonate and movements become successful⁷⁹. Frames are not ideas and concepts themselves, but rather means of packaging these ideas and presenting them in order to gain support. A frame is therefore an interpretive package surrounding a central idea⁸⁰. Activists and advocates must strategically frame their concerns in a way that will resonate and mobilise people to create change. In this case of MDWs, the frame of ‘domestic workers as victims of modern slavery’ has clearly emerged when we examine the work of NGOs focusing on this issue.

Kalayaan is the only NGO in the UK with a sole focus on the rights of domestic workers. It was formed in 1987 alongside Waling-Waling to campaign for recognition of MDWs under the immigration system and to ensure that the rights of domestic workers are protected⁸¹. Following the success of the 1990s campaign Waling-Waling was disbanded, however Kalayaan continued its work. Currently, the organisation does advocacy and campaigning work, provides immigration and employment advice for MDWs and runs English classes⁸². Kalayaan also produces annual reports on the situation of domestic workers in the UK, documenting abuse and mistreatment, and makes policy recommendations to the British government. Since 2012 Kalayaan has made reversing changes to the ODWV, particularly the way in which the visa prevents domestic workers from changing employer once in the UK, central to its advocacy and campaigning work. Their central tactic has been to suggest that tying a domestic worker’s immigration status to their employer

⁷⁹ Engle Merry, ‘Transnational Human Rights’, 41.

⁸⁰ *ibid.*

⁸¹ Kalayaan, ‘Our History’, Kalayaan: Justice for Migrant Domestic Workers. Accessed 5 August 2016. <http://www.kalayaan.org.uk/about-us/our-history/>.

⁸² Kalayaan, ‘What We Do’, Kalayaan: Justice for Migrant Domestic Workers. Accessed 5 August 2016. <http://www.kalayaan.org.uk/about-us/what-we-do/>.

makes them akin to slaves. The organisation argues that the reluctance of the government to reinstate protections for MDWs means they are “*Britain’s forgotten slaves*”⁸³. In a number of policy briefings the post-2012 ODWV is argued to be “*slavery by another name*,” due to the fact that domestic workers who experience abuse are unable to leave their employer without becoming undocumented and facing deportation⁸⁴.

Kalayaan’s reports have focused on highlighting the increased instances of abuse among MDWs who enter on the post-2012 ODWV as opposed to the previous system. Their statistics show increased instances and severity of abuse across all areas compared to the pre-2012 system⁸⁵. This therefore serves to highlight the huge impact such as restrictive immigration system has on the working and living conditions of domestic workers. The organisation states that, “*We know these workers are vulnerable. In tying them to their employers, we are fuelling slavery rather than fighting it*”⁸⁶. Kalayaan has therefore advocated for a reinstatement of the pre-2012 visa, which enabled MDWs to change employer, as a means of combatting the conditions of modern slavery in which domestic workers find themselves.

Alongside Kalayaan, larger organisations such as Anti-Slavery International and Liberty have advocated for changes to the ODWV on the basis that the visa is a form of modern slavery. Much of the campaign work of both Anti-Slavery International and Liberty has focused on linking modern-day slavery to the transatlantic slave trade. This link is central to Anti-Slavery International’s work. The organisation was founded in 1839 by abolitionists including William Wilberforce and Thomas Clarkson. Anti-Slavery International therefore claims the title of the

⁸³ Kalayaan, *Britain’s Forgotten Slaves: Migrant Domestic Workers in the UK Three Years After the Introduction of the Overseas Domestic Workers Visa*, London: Kalayaan, 2015, 1.

⁸⁴ Kalayaan, *Slavery by Another Name: The Tied Migrant Domestic Worker Visa*, London: Kalayaan, 2013, 1.

⁸⁵ Kalayaan, *Annual Report*, 7.

⁸⁶ Kalayaan, *Slavery by Another Name*, 2.

world's oldest human rights organisation, as it campaigned against the slavery trade and slavery in the British Empire in the 19th century⁸⁷. It bases its continuing work on the premise that, "*Slavery did not end with abolition in the 19th century,*" but rather continues to day in altered forms⁸⁸. Similarly, on a campaign page on their website, Liberty states, "*Centuries after the slave trade was abolished in Britain, the scandal of modern day slavery continues*"⁸⁹." The implications of this conflation are that modern day campaigners must continue the unfinished work of the brave anti-slavery campaigners in the past.

Both Anti-Slavery and Liberty have argued that MDWs are victims of this continuing phenomenon of modern slavery. An ongoing campaign from Liberty, entitled 'Help End Modern Slavery', demands the reinstatement of the pre-2012 ODWV arguing that the visa changes "*strengthened the hand of the slave master against the victim,*" thereby painting foreign employers as modern slaveholders⁹⁰. Similarly, Anti-Slavery has described the ODWV as creating the "*perfect conditions for slavery*", and has been actively involved in calling for the creation of new laws specifically addressing the crime of slavery, and the repeal of changes to the ODWV⁹¹. Anti-Slavery has pointed to many of the same abuses documented by Kalayaan, such as the withholding of passports, use of violence and threat of violence, and being unable to leave the house alone as some of the conditions that make domestic work akin to modern slavery⁹².

⁸⁷ Anti-Slavery International, 'Who We Are'. Anti-Slavery. Accessed 7 July 2016. http://www.antislavery.org/english/who_we_are/english/who_we_are/english/who_we_are/antislavery_international_today.aspx.

⁸⁸ Anti-Slavery International, 'What is Modern Slavery'. Anti-Slavery. Accessed 7 July 2016. http://www.antislavery.org/english/slavery_today/what_is_modern_slavery.aspx.

⁸⁹ Liberty, 'Help End Modern Slavery: Reinstate Vital Protections for Domestic Workers', Liberty Human Rights. Accessed 9 July 2016. <https://www.liberty-human-rights.org.uk/help-end-modern-slavery>.

⁹⁰ *ibid.*

⁹¹ Anti-Slavery International, 'Slavery in the UK'. Anti-Slavery. Accessed 10 July 2016. http://www.antislavery.org/english/slavery_today/slavery_in_the_uk/default.aspx.

⁹² Anti-Slavery International, 'Domestic Work and Slavery'. Anti-Slavery. Accessed 12 July 2015. http://www.antislavery.org/english/slavery_today/domestic_work_and_slavery/default.aspx.

The frame employed by these groups, of domestic workers as victims of modern slavery, has resonated and been picked up by the news media. Media coverage of incidences of modern slavery have become common, with newspapers including *The Independent* and *The Guardian* providing sustained reporting on cases of trafficking and slavery⁹³. Headlines such as “*UK tied visa system 'turning domestic workers into modern-day slaves'*,” have drawn attention to the issue by playing on the shocking nature of the notion of slavery in modern-day Britain⁹⁴. These newspapers have often quoted directly from the work of these NGOs, highlighting the significance of the frame employed by the organisations when discussing domestic workers.

Domestic Workers and the Modern Slavery Act

NGOs working on the problems faced by MDWs in the UK came together to call for an amendment to the Modern Slavery Bill, a recently passed bill aimed at eradicating modern slavery in the UK. The 2015 Modern Slavery Act has served to consolidate existing legislation relating to trafficking and modern slavery in Britain. The Act makes it a criminal offence to hold another person in slavery or servitude, or to require another person to perform forced or compulsory labour⁹⁵. Similarly, in relation to human trafficking, the Act creates an offence of facilitating the travel of another person with a view to that person being exploited⁹⁶. The maximum sentence available for traffickers and ‘slave-drivers’ was increased from fourteen years to life imprisonment,

⁹³ See *The Independent* <http://www.independent.co.uk/topic/Slavery> and *The Guardian* ‘Modern Slavery in Focus’ online hub <https://www.theguardian.com/global-development/series/modern-day-slavery-in-focus>.

⁹⁴ A. Sloan, ‘UK Tied Visa ‘Turning Domestic Workers into Modern-Day Slaves’’, *The Guardian*. 17th March 2015. Accessed 6 July 2016. <https://www.theguardian.com/world/2015/mar/17/uk-tied-visa-system-turning-domestic-workers-into-modern-day-slaves>.

⁹⁵ Modern Slavery Act 2015, s 1 (1) (a).

⁹⁶ Modern Slavery Act 2015, s 2 (1).

and the Act ensures perpetrators face the toughest asset confiscation regime⁹⁷. Then Home Secretary, and current Prime Minister, Theresa May was described as an “*heir to Wilberforce*,” with suggestions that this legislation established Britain’s position as a world leader in contemporary abolitionism and the fight against modern slavery⁹⁸. As this chapter will go on to discuss, the suggestion that the Act serves to continue a long history of British fight against slavery is highly problematic.

The introduction of a bill on modern slavery in the UK was in part a direct response to a case heard at the European Court of Human Rights (ECtHR), relating directly to the situation of a domestic worker. The rights of MDWs have appeared before the ECtHR only in relation to Article 4 of the European Convention on Human Rights (ECHR) (the prohibition of slavery, servitude, forced and compulsory labour). The landmark case in this regard was *Siliadin v. France*⁹⁹. The applicant was a Togolese national who was brought to France when she was fifteen on the promise that she would be education, but was instead put to work as an unpaid domestic worker¹⁰⁰. Her passport was taken from her and she had to live and work in shocking conditions, working seven days a week and sleeping on a mattress on the floor in the baby’s room¹⁰¹.

The Court explained that this was not ‘slavery’, as the employer did not exercise a legal right of ownership over the worker¹⁰². However, the Court characterised it as ‘servitude’, and

⁹⁷ K. Bradley and T. May, ‘Historic Law to End Modern Slavery Passed’, GOV.UK. 26 March 2015. Accessed 15 July 2016. <https://www.gov.uk/government/news/historic-law-to-end-modern-slavery-passed>.

⁹⁸ F. Nelson, ‘William Wilberforce’s Heirs are Ready to Tackle the Great Evil of the Age’. The Times. 22 August 2013. Accessed 20 July 2016. <http://www.telegraph.co.uk/news/politics/david-cameron/10259927/William-Wilberforces-heirs-are-ready-to-tackle-the-great-evil-of-the-age.html>.

⁹⁹ *Siliadin v. France*, [2005] App No.73316/01, European Court of Human Rights.

¹⁰⁰ *Siliadin*, 13.

¹⁰¹ *Siliadin*, 14.

¹⁰² *Siliadin*, 122.

therefore the case still fell within the scope of Article 4¹⁰³. The Court found that Article 4 imposes positive duties on states to criminalise private conduct that falls within the scope of Article 4, and that France, which had no such legislation, was therefore failing to fulfil its obligations under Article 4¹⁰⁴. This decision by the Court was key to the development of legislation in the UK to criminalise modern slavery, as it highlighted that all states parties to the ECHR must undertake positive steps to prevent and punish slavery and servitude.

The Modern Slavery Bill also fits the trend of a burgeoning growth of anti-slavery and anti-trafficking legislation on the international level. Both the UN and the EU have developed a framework for tackling these issues. In 2000 the UN adopted the Convention Against Transnational Organised Crime, which is supplemented by three protocols on human trafficking, migrant smuggling and arms trafficking, collectively known as the Palermo Protocols¹⁰⁵. Unlike other treaties that relate to the conditions of MDWs, including the CEDAW and the CMW, this convention is not a human rights convention or part of international human rights law. Rather, the convention and subsequent protocols fall under the Office of Drugs and Crimes.

The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children established the first accepted definition of what constitutes trafficking under international law¹⁰⁶. Under the Protocol, trafficking is defined as, “*The recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion...*

¹⁰³ *Siliadin*, 129.

¹⁰⁴ *Siliadin*, 149.

¹⁰⁵ United Nations, General Assembly, *United Nations Convention Against Transnational Organised Crime*. New York: 15 November 2000. A/RES/55/25.

¹⁰⁶ J. O’Connell Davidson, ‘Will the Real Sex Slave Please Stand Up?’, *Feminist Review*, 83 (2006) 9.

*for the purpose of exploitation*¹⁰⁷.” The definition of trafficking accepted on the international level is therefore a three stage process of recruitment, transportation and exploitation, rather than a specific outcome or event. In comparison, migrant smuggling is defined as the illegal movement of persons across borders for profit¹⁰⁸. The elements that separate trafficking from smuggling are therefore force/coercion and the purpose of exploitation. However, in many cases these aspects will be far from obvious. In it’s most clear cut form, a victim of trafficking (VoT) would be abducted, transported and forced into exploitative labour through violence. At the other end of the spectrum, a migrant who has been smuggled will simply have paid a smuggler to transport them illegally across borders. In reality there is much that falls in between these two clear cut cases.

Furthermore, these definitions raise questions over how we define force/coercion. Whilst the Protocol specifies a person must be subjected to force or coercion, it offers no definition of these terms, specifically whether or not this violence must be physical in nature. Large numbers of MDWs migrate due to lack of economic opportunity in their home country. Arguably these women have made a free decision to migrate, as they have not been directly subjected to violence or the threat of violence. However it is questionable as to what extent this decision can be regarded as totally free, as total lack of opportunity has left these women with few other choices. The Trafficking and Smuggling Protocols therefore set up oppositional categories of voluntary versus involuntary migration, which vastly oversimplifies the experiences of many MDWs.

¹⁰⁷ United Nations, General Assembly, *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organised Crime*. New York: 15 November 2000, Article 3(a).

¹⁰⁸ United Nations, General Assembly, *Protocol against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention against Transnational Organised Crime*. New York: 15 November 2000, Article 3(a).

This legislation has been readily adopted by national governments. The Trafficking Protocol has been ratified by 169 countries, including the UK¹⁰⁹. Similarly, the Protocol on Migrant Smuggling has 142 states parties¹¹⁰. This high level of ratification is striking, especially when considered alongside the low level of ratification for the CMW, which has so far has only 48 states parties¹¹¹. Unlike the CMW, which has largely only been ratified by migrant sending countries, the Palermo Protocols have been adopted by major migrant receiving countries including European powers and the US. This is reflective on the fact that the CMW grants rights to migrants, whilst anti-trafficking legislation has largely focused on criminal law enforcement and not on human rights protections for VoTs.

The Protocols do not grant rights to VoTs or oblige states to fulfil duties towards them. Rather it is the identification and prosecution of traffickers and smugglers that is the key thrust of the Protocols. Although NGOs campaigned for the inclusion of a right for VoTs to remain in the receiving country, the Committee never seriously considered this¹¹². The Convention is therefore mainly focused on ensuring international cooperation between law-enforcement to prevent traffickers and smuggling from being able to operate, as opposed to ensuring the rights of victims are protected. The Protocols also makes little attempt to deal with the core foundational problems that lead people to fall into the hands of human traffickers and smugglers, such as poverty and conflict. Chapter III of the Protocol, entitled 'Prevention, Cooperation and Other Measures', outlines the clear focus on law-enforcement and border control, and calls for border controls to be strengthened as a necessary means deterring and preventing trafficking¹¹³. It is this drive to increase

¹⁰⁹ Office of the High Commissioner, 'Status of Ratification'.

¹¹⁰ *ibid.*

¹¹¹ *ibid.*

¹¹² A. Gallagher, 'Human Rights and the New UN Protocols on Trafficking and Migrant Smuggling: A Preliminary Analysis', *Human Rights Quarterly*, 23 (2001) 992.

¹¹³ United Nations, *Trafficking Protocol*, Article 11(1).

cooperation amongst law-enforcement and border police that therefore lies at the heart of the Convention, providing States parties with greater scope to exclude people suspected of being a VoT.

As with the UN Protocols, the Modern Slavery Act is based on law-enforcement as opposed to the protection of victims' rights. Theresa May stated, "*This landmark legislation sends the strongest possible signal to criminals that if you are involved in this vile trade you will be arrested, you will be prosecuted and you will be locked up*¹¹⁴." The Act gives law-enforcement the power to seize assets from traffickers, but makes little provisions for ensuring the protection and rehabilitation of victims. Initially the Bill contained no provisions for the protections of victims, and it was only after advocacy work from NGOs that the Bill was altered to put greater emphasis on protection. However the final Bill is still highly lacking in this area. Victims are not given an immediate right to remain in the UK, and are offered limited resources in terms of rehabilitation¹¹⁵. Much of the emphasis of victim protection is on witness protection in criminal proceedings against traffickers and slaveholders, highlighting again the focus on bringing the criminal law to bear on perpetrators, as opposed to helping victims to stay in the country and find alternative forms of employment¹¹⁶. Furthermore, those who are not found to be victims of slavery or trafficking are offered none of these limited protections, and therefore have no access to legal aid or any right to remain in the UK¹¹⁷.

Alongside anti-slavery legislation that UK Government has also been keen to introduce anti-trafficking measures to fulfil its obligations under the Palermo Protocols. In March 2007 the government published the UK Action Plan on Tackling Human Trafficking. The document established the tone of the government's trafficking and slavery legislation, which has explicitly

¹¹⁴ Bradely and May, 'Historic Law to End Modern Slavery Passed'.

¹¹⁵ Modern Slavery Act 2015, Part V.

¹¹⁶ Modern Slavery Act 2015, s 46.

¹¹⁷ Modern Slavery Act 2015, s 47.

linked modern efforts to those of abolitionists of the past. The Action Plan begins by stating, “*This year, it is 200 years since Parliament passed the Act to abolish the slave trade in the British Empire. Whilst we reflect on the past... we must not forget the plight of thousands of people who are forced to live in slave-like conditions as a result of the cruel and inhuman criminal practices perpetrated by twenty-first century traffickers*¹¹⁸.” In drawing a single line between the abolitionist movement of the 19th century and the fight against modern day slavery, the Action Plan places the emphasis on Britain as saviour of the slaves.

The National Referral Mechanism (NRM) is another key aspect of Britain’s anti-trafficking legislation. In 2015 the NRM received 3,266 referrals, of which 674 (20.6%) were positively concluded to be VoTs¹¹⁹. The vast majority of these referrals, over 70%, came from the Home Office UK Visas and Immigration (UKVI). These statistics show that whilst the number of people being referred to the NRM has increased every year, the number of people positively determined to be VoTs has been decreasing. The involvement of UKVI in the process of identifying VoTs represents a conflict of interests for a department whose mandate is simultaneously to identify illegal immigrants and VoTs. The mandate of the NRM to forge closer links between the immigration services and law enforcement highlights the ways in which anti-trafficking and slavery legislation has served to move border controls steadily inwards and created a focus on in-country identifications of both VoTs and illegal migrants.

A Protectionist Response

The passing for the Modern Slavery Bill, alongside the UK’s enthusiasm for adopting international anti-trafficking legislation, has therefore been seen by advocates as a huge opportunity

¹¹⁸ Home Office, *UK Action Plan of Tackling Human Trafficking*, London: UK Government, 2007, 2.

¹¹⁹ United Kingdom Human Trafficking Centre, *National Referral Mechanism Statistics - End of Year Summary 2015*, London: National Crime Agency, 2016, 3.

to remedy the abuse of MDWs. Given the largely hostile attitudes towards immigration, calls to stamp out modern slavery have appeared as an ideal opportunity for advocates to improve the situation of MDWs. Liberty argues that the Bill is “*the ideal vehicle to tackle what is a well-documented channel of abuse and exploitation*” against domestic workers¹²⁰. NGOs have therefore framed their concerns in order to fit the political opportunity structure that has developed around modern slavery. These NGOs called for an amendment to the Modern Slavery Bill to address the modern slavery of domestic workers. The amendment was tabled by independent peer Lord Hylton and supported in the House of Lords. Its aim was to ensure domestic workers had the right to change employer whilst in the UK, reinstating the protections of the pre-2012 visa¹²¹.

In spite of the best efforts of these NGOs, the amendment to the Modern Slavery Bill was rejected in the House of Commons by a majority of 67 - 276 votes to 209¹²². MPs who opposed to the amendment argued that the protections afforded to victims of slavery and trafficking through the NRM were sufficient for the protection of MDWs¹²³. Instead the Government passed a much weaker amendment which allowed only domestic workers who have already been proven to be victims of slavery or trafficking to change employer be granted leave to remain in the UK for a minimum of six months¹²⁴. The rejection of the amendment ultimately means MDWs must either stay with an abusive employer, or come forward to police and risk deportation if they are not found to be a VoT.

¹²⁰ R. Robinson, ‘The Modern Slavery Battle was Lost - But the War is Far From Over’. Liberty Human Rights. 26th March 2015. Accessed 20 July 2016. <https://www.liberty-human-rights.org.uk/news/blog/modern-slavery-battle-was-lost---war-far-over>.

¹²¹ House of Commons, ‘Consideration of Lords Amendment: Modern Slavery Bill’. Parliament.UK. 17th March 2015. Accessed 12 June 2016. <http://www.publications.parliament.uk/pa/bills/cbill/2014-2015/0184/amend/psc1841603m.1779-1782.html>.

¹²² *ibid*.

¹²³ House of Commons, ‘Commons Debate: Tuesday 17 March 2005’. Parliament.UK. 17th March 2015. Accessed 14 June 2016. <http://www.publications.parliament.uk/pa/cm201415/cmhansrd/cm150317/debtext/150317-0001.htm#15031750000002>.

¹²⁴ House of Commons, ‘Consideration of Lords Amendment’.

The rejection of the Lords Amendment to the Modern Slavery Bill demonstrates the limitations of the domestic workers as victims of modern slavery paradigm. Rather than serving as a means to enhance protections for MDWs, anti-slavery legislation has actually enabled the government to justify excluding domestic workers from entering the country. In a statement regarding the changes to the ODWV in 2012, the Home Office stated, “*The biggest protection for these workers will be delivered by limited access to the UK through these routes*¹²⁵.” The Home Office has therefore been able to present immigration controls as the solution to the problem of human trafficking and modern slavery, as opposed to one of the direct causes. This parallels the way in which these issues have been framed on the international level; as a matter of law enforcement and greater border protections. As discussed earlier, a conflict of interests is evident when the same body, the Home Office, is responsible for both identifying VoTs and reducing net migration to the UK. The quote from the Home Office reveals how anti-trafficking legislation has served to aide the department on both of its objectives, by limiting access to the UK for migrants.

The trafficking and modern slavery framework has there become a means of enabling exclusion for vulnerable groups. This is further evidenced by the parliamentary rejection of an amendment to the Immigration Bill to accept 3,000 unaccompanied child refugees from Syria and the Middle East. Ministers who voted against the amendment argued that offering sanctuary to vulnerable children could create a pull factor, and mean more children fall into the hands of human traffickers¹²⁶. The focus of the trafficking paradigm on criminal law and border control has

¹²⁵ Home Office, ‘Statement of Intent: Changes to Tier 1, Tier 2 and Tier 5 of the Points Based System; Overseas Domestic Workers; and Visitors’. GOV.UK. February 2012. Accessed 16 June 2016. https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/117953/tiers125-pbs-overseas-soi.pdf.

¹²⁶ BBC News, ‘Government Avoids Defeat Over Lone Child Refugees Call’, BBC News. 26th April 2016 . Accessed 6 July 2016. <http://www.bbc.co.uk/news/uk-politics-36134837>.

therefore clearly aided the Government's in its agenda to reduce net migration to the UK by creating a justification for excluding migrants and refugees on humanitarian grounds.

Furthermore, within this narrative slavery is seen as a foreign problem that is being imported into the UK by evil, foreign criminals. A quote for Lord Hytton highlights the focus on slavery as a foreign import into Britain. He stated, "*We are importing the kind of mentality they have in the Gulf States, the same kind of conditions you see in Saudi Arabia, Kuwait or the United Arab Emirates. The government argues that changing the law will attract too many foreign domestic workers wanting to emigrate to the UK... [but] domestic workers don't choose to come here, they are brought here with their Middle Eastern employers*¹²⁷." Slavery is here presented as an issue brought into the UK by Middle Eastern employers and the role of the state in constructing vulnerability for MDWs through its immigration policies is obscured. Although organisations such as Kalayaan have attempted to shift the narrative to illustrate the role of the state in this process, stating that MDWs have been enslaved "*by the immigration rules,*" much focus continues to be placed on foreign, largely Arab, employers who are cast as the villains. The British state is regarded not as the facilitator of slave-like conditions, but rather is cast as heroic, upholding values of freedom and democracy.

This focus on the dichotomy between the moral British and the evil Other is evident in much of the coverage of modern slavery in the UK, which has played on the notion of campaigners and the Government continuing the work of Wilberforce and the abolitionists. However, this serves to perpetuate a simplistic historical narrative in which Britain alone, and particularly one man, William Wilberforce, was responsible for the abolition of the slave trade based solely on moral conviction about the wrongs of slavery. The role of a variety of factors, including economics and slave rebellions in the West Indies, in bringing an end to the slave trade are obscured in this vision which

¹²⁷ Sloan, 'UK Tied Visa 'Turning Domestic Workers into Modern-Day Slaves'.

positions Britain as the saviour of the slaves¹²⁸. The notion of modern slavery efforts continuing the work of historical abolitionists is therefore problematic in the way in which it paints the British State, both past and present, as heroic saviour.

The role of the British State in constructing vulnerability for MDWs through restrictive immigration policies is therefore obscured in this focus on evil foreign employers and the heroic modern abolitionists. This narrative of the white saviour and the poor victim plays on gendered and racialised notions of victimhood, particularly as MDWs are largely women of colour. The Modern Slavery Act has the stated intention of protected the most vulnerable, however vulnerability does not simply exist in a vacuum; people are made vulnerable when they lack legal protections and the ability to exercise their rights. As we have seen, domestic workers in the UK lack basic employment protections afforded to other workers and are constricted by a restrictive immigration system. It is these factors that enable human rights violations against domestic workers, however this is obscured by focusing solely on the role of the employer and not on that of the State.

The quote from Lord Hylton also highlights the lack of agency assigned to MDWs in the migration process under the modern slavery framework. Domestic workers are seen as helpless victims who make no active choices or decisions, but are simply the at the will of their criminal employers. Within this paradigm, poor women are tricked and abused by foreign criminals and brought to the UK where they will be saved, or excluded for their own protection. As victims, MDWs are assigned no agency and thus looked upon in a paternalistic manner, with sympathy as opposed to as legitimate rights-holders. This reflective of the wider issue of the gendered nature of the anti-trafficking discourse, which serves to infantilise women by equating them with children,

¹²⁸ For a revisionist history of the abolition of the slave trade see for example E. Williams, *Capitalism and Slavery*, (University of North Carolina Press: Chapel Hill, 1944).

and focuses on the paternalistic notion of rescuing them¹²⁹. Some of the most outspoken critics of the anti-trafficking framework have been sex workers' rights advocates, who have suggested that these efforts have only served to further stigmatise sex workers by dividing migrant women into victims, if they have been trafficked, or criminals, if they are willing participants in the sex trade¹³⁰. For domestic workers this binary is also evident, as these women are either regarded as slaves in need of rescuing, or criminals violating immigration laws.

The modern slavery framework is equally problematic in the way that it sets a very high threshold for victimhood¹³¹. As discussed in chapter one, MDWs in the UK are subject to a number of human rights abuses, the tied ODWV visa being one of these. Many of these abuses, such as working excessive hours, having no time off, and being paid less than the minimum wage, are more widespread and common, but difficult to categorise as slavery¹³². That only just over 20% of the people referred to the NRM in 2015 were positively identified as VoTs highlights the high standard set. For MDWs who face abuse and unfair working conditions the chance of being afforded the protections of anti-trafficking measures is slim; only 292 of the 3266 referrals to the NRM were women in domestic service. For those who are identified as VoTs this provides only a limited selection of rights and much focus continues to be on returning victims to their home country¹³³. This is due to the way anti-trafficking legislation has made little consideration of the human rights of VoTs. In *Siliadin*, for example, the Court recognised the positive obligations imposed on states by

¹²⁹ C. Gould, 'The Problem of Trafficking', in I. Palmary, E. Burman, K. Chantler and P. Kiguwa, *Gender and Migration: Feminist Interventions* (Zed Books: London, 2010) 35.

¹³⁰ Gould, 'The Problem of Trafficking', 42.

¹³¹ O'Connell Davidson, 'Will the Real Sex Slave Please Stand Up?', 16.

¹³² Anderson, 'Good Workers, Poor Slaves', 645.

¹³³ Home Office, 'Statement of Intent'.

Article 4 to criminalise modern slavery, however it failed to suggest that this obligation could extend to regularisation of a victim's migration status.

Anti-slavery and anti-trafficking legislation has attempted to demarcate a boundary between victims, who are deserving of our pity, on the one hand and economic migrants, who deserve little sympathy or assistance, on the other. The reinforcement of this dichotomy between good and bad migrants is evident in the current narrative surrounding the refugee crisis. The purposeful classification by politicians and the media of these people as economic *migrants* not as *refugees* has served to present them as undeserving. As such, the space to claim rights as a migrant has been shut down. Furthermore the human trafficking and modern slavery narrative has become depoliticised. No one could be in favour of slavery, and thus all must be in favour of the fight against modern slavery in Britain. However when critically examined we can see how this legislation has not served to further the rights of MDWs in the UK, but rather to justify their exclusion and close down space for them to claim rights as workers.

The tactic employed by organisations advocating for the rights of MDWs has therefore been to attempt to expand the meaning of human trafficking and modern slavery to encompass within it abuses against MDWs. Central to this has been attempting to show that tying domestic workers to their employer through the ODWV creates conditions of modern slavery. However, this chapter has argued that there are fundamental flaws in this paradigm, namely its focus on border control and criminal law, which has meant the Government has been able to utilise it for the agenda of limiting migration to the UK. By working within this paradigm and trying to expand it, rather than critiquing the foundations on which anti-trafficking and modern slavery legislation rests, we have seen a reinforcement of an approach which is based on securitisation, invoked protectionist responses and takes little considerations for the human rights of MDWs. We must therefore consider alternative ways to frame rights for domestic workers beyond the slavery and human trafficking framework, based not on criminal law mechanisms but on human rights principles.

Chapter Three: Rights and Responsibilities

The dominant frame that has emerged around MDWs in the UK is that these women are victims of modern day slavery. Engaging with legislation that has gained traction on both the national and international levels, NGOs have attempted to link the plight of domestic workers to the concept of modern slavery and show that tying domestic workers to their employer creates slave-like conditions. However, as we have seen, framing the rights for domestic workers in such a way is highly problematic, replicating gendered notions of victimhood, obscuring the role of the state in constructing vulnerability and setting an extremely high threshold for violations. The focus on modern slavery has not led to an increase in protections and rights for domestic workers, but has conversely been used as a means to justify further excluding MDWs from accessing the UK labour market by the Government that argues domestic workers must be excluded for their own protection.

There must therefore be a move away from the slavery and human trafficking framework, which is not itself grounded in human rights but in criminal law and border control. This chapter seeks to formulate a human rights-based approach to the issues faced by MDWs, which treats domestic workers as legitimate rights-holders with agency and refocuses responsibility back onto the role of the state in producing vulnerability.

Challenging Victimisation

The modern slavery and human trafficking frame presents MDWs as passive victims, which in turn has served to justify the interventions of the state, particularly with regard to restrictive immigration policies. This has particular gendered implications, relying on stereotypical portrayals of women as weak and vulnerable, almost child-like, with no agency of their own. However, an examination of domestic workers' actions and organisation highlights that this is not the case, and reveals them to be active political agents and industrial citizens. MDWs in the UK have formed

organisations, joined transnational alliances and actively challenged unfair and discriminatory laws and policies.

One way in which MDWs have become politically active is through the formation of domestic workers' organisations. The group Justice for Domestic Workers (J4DW) was formed in London in 2009 as a self-help and support group for domestic workers¹³⁴. Currently the group has around one thousand members, all of who pay a £1 monthly membership to support the activities of the organisation¹³⁵. The group is therefore entirely organised and run by domestic workers for domestic workers. The managing board is made up of MDWs from the Philippines, India, Indonesia, Sri Lanka, Morocco and Nigeria¹³⁶. As well as offering a space for MDWs to meet and organise, the group runs free English and ICT lessons, legal surgeries, employment rights advice, and offers practical support for MDWs who have run away from their employment, as well as organising workers to speak out about the value of they work, lobbying parliament and speaking out in the media to raise public awareness of issues relating to domestic work¹³⁷. J4DW is associated with the hotel and restaurant branch of Unite, the largest trade union in the UK. However, it is not involved in traditional union activities, such as collective bargaining and strike action, and members of J4DW are not required to be members of Unite¹³⁸. J4DW therefore represents its own unique form of organisation suited to the needs of domestic workers themselves.

¹³⁴ Z. Jiang and M. Korczynski, 'When the 'Unorganisable' Organise: The Collective Mobilisation of Migrant Domestic Workers in London', *Human Relations*, 69 (2016) 821.

¹³⁵ V. Mantouvalou and E. Albin, 'Active Industrial Citizenship of Domestic Workers: Lessons Learned from Unionising Attempts in Israel and the United Kingdom', *Theoretical Inquiries in Law*, 17 (2016) 341.

¹³⁶ *ibid.*

¹³⁷ Justice for Domestic Workers, 'Our Mission', Justice for Domestic Workers. 2015. Accessed 2 June 2016. <http://www.j4dw.com/#!/our-mission/cee5>.

¹³⁸ Mantouvalou and Albin, 'Active Industrial Citizenship', 342.

J4DW has also engaged in transnational alliances. As part of a global movement, J4DW gathered outside Parliament to celebrate International Domestic Workers Day on 19th June 2016, and draw attention to the contributions that domestic workers make to the UK economy and economies around the world¹³⁹. The event was co-run with One Billion Rising, a campaign and movement aimed at ending violence against women. Given its name to represent the fact that one in three women will be subject to gender-based violence during their lifetime, totalling over one billion women around the world, One Billion Rising demands justice and action to tackle violence against women and girls¹⁴⁰. By teaming up with this global revolutionary movement, and joining domestic workers around the world in celebrating International Domestic Workers Day, MDWs in the UK have linked their cause to the global struggle of domestic workers around the world for rights, demonstrating both awareness and a demand for change.

J4DW is also a member of the RESPECT (Rights, Equality, Solidarity, Power in, Europe and Co-operation Today) network, a European-wide network of domestic workers' organisations and supporters. RESPECT emerged from the work of Waling-Waling and Kalayaan and now encompasses members from eleven countries across Europe¹⁴¹. The RESPECT network supports its members' campaigns and facilitates a space to share experiences and knowledge of campaigning, organising and lobbying¹⁴². The network states that, "*Women migrant domestic workers in Europe are contributing to European family life, to European economic growth and to European welfare*

¹³⁹ Justice for Domestic Workers, 'International Domestic Workers Day', Justice for Domestic Workers. 17 July 2016. Accessed 3 August 2016. <http://www.j4dw.com/#!/International-Domestic-Workers-Day-2016-A-renewed-hope-for-UK-Migrant-Domestic-Workers/c1n3s/578bf3240cf2a8522f8f24a6>.

¹⁴⁰ One Billion Rising, 'About', One Billion Rising Revolution. 2016. Accessed 3 August 2016. <http://www.onebillionrising.org/about/campaign/one-billion-rising/>.

¹⁴¹ Schwenken, 'RESPECT for All', 46.

¹⁴² *ibid.*

*systems*¹⁴³.” They are therefore calling for respect on the basis of the value of their work, demanding that contribution of domestic work to European society be recognised.

RESPECT’s ‘Charter of Rights of Migrant Domestic Workers’ illustrates the rights-based, framework employed by the network. The Charter calls for justice and equality for all MDWs, as well as the recognition by European states of the intrinsic dignity and importance of domestic work to society¹⁴⁴. Furthermore, the Charter calls for labour rights to be applicable to MDWs, including the right to change employer, the right to join a trade union, to a legally enforceable contract of employment, minimum wages and maximum hours¹⁴⁵. The emphasis of the Charter is that domestic workers should be afforded rights because they are legitimate workers, and the work they do is important to European society. One of the network’s key aims is the recognition of work in the private household as proper work¹⁴⁶. The existence of networks such as RESPECT demonstrates a political activism from domestic workers, who are demanding change through non-traditional (in the sense of labour activism) means of organising.

Domestic workers have also demonstrated their activism by bringing cases to the UK courts and challenging unfair laws and policies. These cases have ranged from challenging the exclusion of domestic workers from the National Minimum Wage Regulations 1999 (*Nambalat v. Taher & Anor*; *Udin v. Pasha*), to discrimination on the basis of immigration status (*Onu v. Akwiwu*; *Taiwo v. Olaigbe & Anor*) and racial discrimination (*Hounga v. Allen*)¹⁴⁷. Despite the limited success of

¹⁴³ RESPECT, ‘Home’, RESPECT Network EU. Accessed 31 May 2016. <http://www.respectnetworkeu.org>.

¹⁴⁴ RESPECT, *Charter of Rights for Migrant Domestic Workers*. London and Brussels: RESPECT Network EU, 2000.

¹⁴⁵ *ibid.*

¹⁴⁶ RESPECT, *Submission to the United Nations Human Rights Council: Committee on Migrant Workers*. RESPECT Network EU: 14th October 2009, 11.

¹⁴⁷ *Nambalat v. Taher & Anor*; *Udin v. Pasha* [2012] EWCA Civ 1249; *Onu v. Akwiwu*; *Taiwo v. Olaigbe & Anor* [2016] UKSC 31; and *Hounga v. Allen* [2014] UKSC 47.

these cases, the very act of challenging the exclusion of domestic workers from employment legislation in the courts highlights how domestic workers are not passive victims of abuse, and recognise the discriminatory nature of UK labour law that fails to include domestic work.

MDWs who have not taken the formal route of challenging their situation in court have also taken active measures to improve their situation, potentially by seeking out advice and support through NGOs such as Kalayaan, or joining groups such as J4DW. Between 1st April 2014 and 31st March 2015 Kalayaan registered 188 new workers who had come forward to the organisation seeking advice and support¹⁴⁸. Equally, J4DW has expanded and established a presence in the North of England with the formation of J4DW Leeds. Formed in 2013 following a specific instance of abuse against a domestic worker, the Leeds branch of the organisation aims to expand the national reach of the campaign and provide support for MDWs in the North¹⁴⁹. The creation of these groups and support networks by domestic workers are evidence of the active steps for change these women are taking.

The phenomenon of domestic workers organising and calling for change is not confined to the UK, and has been evident around the world in recent years. Despite the significant barriers MDWs face, including the isolated individuated nature of their work, and irregular or unstable migration status, many domestic workers have taken part in associational organising and pushed for change on both a local and international level. The emergence of an ILO Convention on domestic work was the direct result of a push from domestic workers themselves¹⁵⁰. Through these activities MDWs in the UK and around the world have demonstrated themselves to be active industrial citizens and not passive victims of abuse. The concept of industrial citizenship stresses the

¹⁴⁸ Kalayaan, *Britain's Forgotten Slaves*, 1.

¹⁴⁹ Justice For Domestic Workers, 'Our Mission'.

¹⁵⁰ Becker, *Campaigning for Justice*, 47.

importance of making citizenship through action and participation in political life, such as joining a trade union, rather than simply being passive rights holders¹⁵¹. Feminists and migration scholars have critiqued this concept, highlighting how the traditional concept of active citizenship is constructed around a male-national citizen taking action in the public sphere¹⁵². This model pays little attention to activities taking place in the private sphere. Furthermore it fails to consider the barriers to public activism in place for many migrants. Particularly for undocumented migrants, participation in civic life is incredibly difficult due to the constant fear of deportation¹⁵³. Given their highly restrictive immigration status, many domestic workers on the post-2012 visa may struggle to be politically active and to challenge their situation. In spite of these barriers, MDWs have undertaken a variety of non-traditional forms of resistance, by organising, demonstrating and taking legal action, thereby challenging and reforming our understanding of industrial citizenship.

A human rights-based approach must therefore focus on presenting domestic workers as rights-holders and as active agents, not simply as passive victims of abuse. Under the modern slavery framework, MDWs are presented as poor, downtrodden women who deserve our sympathy. Domestic workers have challenged these stereotypes of passivity stemming from both their gender and migration status by actively taking steps to change their situation. MDWs standing up and demanding rights complicates the narrative of passive victimhood that has built up around them. As the binary between the poor refugee or victim of trafficking and slavery on the one hand, and the economic migrant stealing jobs from nationals on the other, widens, the ability of migrants to claim rights *as* migrant decreases. As we have seen, the trafficking narrative serves only to increase this

¹⁵¹ Mantouvalou and Albin, 'Active Industrial Citizenship', 322.

¹⁵² *ibid.*

¹⁵³ De Genova has conceptualised this idea as 'deportability' in everyday life, in order to understand the impact of illegality on the migrant experience. N. P. De Genova, 'Migrant "Illegality" and Deportability in Everyday Life', *Annual Review of Anthropology*, 31 (2002) 419.

divide, by suggesting a clear division between the experience of VoTs and other migrants. Rights campaigners must find space to recognise the human rights violations these women often experience, whilst not reverting to a simplistic and stereotyped portrayals that play heavily on gendered notions of victimhood. This must include highlighting, rather than shying away from, the active way in which MDWs have challenged their situation through political actions as a means of moving away from the focus on victimisation and towards agency.

The Role and Responsibility of the State

Alongside the presentation of MDWs as victims, a key problem with the focus of modern slavery is the way in which it obscures the role of the state in constructing vulnerability for domestic workers. As discussed in the previous chapter, despite attempts by NGOs to highlight the role of the state in leaving MDWs vulnerable, the modern-slavery narrative continues to play on the trope of the evil foreign employer bringing human rights abuses into Britain. This is particularly evident in the case of the ODWV, as the majority of domestic workers enter the UK with an employer from the Middle East, a group regularly demonised in public discourse. Furthermore, this enables the State to suggest that abuses occurring within the privacy of the home are the responsibility of individuals and not a State issue.

A human rights approach to MDWs' struggles must refocus this debate back onto the responsibility of the State to protect human rights. The suggestion that what occurs in the private sphere is beyond the regulation of the State has long served as a barrier to the full achievement of women's rights, with regard to issues such as domestic violence and sexual violence. However, evolving human rights norms have ensured that the State has a duty and responsible to prevent and punish abuses committed by private individuals and abuses within the context of the home¹⁵⁴. This

¹⁵⁴ The case of *Velásquez Rodríguez* (1988) at the Inter-American Court of Human Rights is the landmark case in this regard in ensuring that the State is held responsibility for violations even when not committed by state actors. *Velásquez Rodríguez v. Honduras* (1988), Inter-Am.Ct.H.R. (Ser. C) No. 4 (1988).

has had a particular impact in ensuring state-responsibility for abuses of women's rights, as many gender-based violations take place within the context of the home and are carried out by non-state actors¹⁵⁵. Women's rights activists have worked hard to have violations occurring in the private sphere, such as domestic violence, defined as a human rights violation, and to highlight that even when states are not directly responsible for acts of gender-based violence their acquiescence makes them culpable as many countries fail to take sufficient measures to prevent and punish gender-based human rights violations. Campaigners must therefore strive to highlight that it is the State, through restrictive immigration policies and a failing to regulate domestic work, that is responsible for human rights abuses against domestic workers.

i) Immigration

Many MDWs are made vulnerable to human rights violations by restrictive immigration policies which seek to exclude them from national labour markets. Therefore the transformation of the treatment of domestic labour, and of gendered forms of employment more widely, in the UK immigration system must be central to a human-rights approach. Many of the issues faced by MDWs stem from the failure of states to recognise the need for, and value of, domestic labour. The modern slavery framework serves only to exacerbate this problem by treating domestic work as degrading. NGOs have focused on highlighting the most severe forms of abuse and exploitation experienced by MDWs as a means of linking the plight of domestic workers to the concept of modern slavery. However, this has served to reinforce the notion of domestic work as 'dirty work'. Domestic labour has only been presented in its worst forms, as undesired and lowly work that no one would choose to do. In *Siliadin v. France*, the issue was not one of decent work, but a young

¹⁵⁵ S. Engle Merry, *Human Rights and Gender Violence: Translating International Law into Local Justice*, (The University of Chicago Press: Chicago, 2006) 22.

foreign woman in a position of extreme vulnerability, in extraordinary circumstances¹⁵⁶. Domestic work, as ‘women’s work’, therefore fails to be seen as valuable and worthwhile, and is rather depicted as something that is demeaning.

The low regard in which domestic work is held is reflected in the UK’s immigration regime, which classifies domestic labour as an ‘unskilled’ profession. As discussed in Chapter One, the UK’s points-based immigration system is constructed around the notion of skill and the division of skilled from unskilled labour. This system of separating ‘skilled’ from ‘unskilled’ migrants is highly gendered, as gender shapes one’s opportunities to gain skills and qualifications. Women around the world continue to fight for equal access to educational opportunities, and structural issues prevent women from gaining valued skills and qualifications, in turn limiting their migratory opportunities. This is reflected in the fact that in 2009, for example, three quarters of Tier Two skilled visa applicants were male¹⁵⁷. Furthermore, the categorisation of domestic work as unskilled labour is gendered, and relies on the notion that domestic work is neither difficult nor valuable. Domestic labour is often dismissed as something that comes easily and innately to women, playing on the idea that domestic work does not require specific knowledge or skills¹⁵⁸. In fact, domestic work requires a number of skills, particularly with regard to childcare and care for the elderly, but skills that are regarded as having little value in terms of immigration and migrant work.

The notion of domestic work as unskilled labour demonstrates the undervaluing of reproductive work performed by women, and the failure to recognise the relationship between feminised labour in the home and ‘productive’ work in the public sphere¹⁵⁹. Furthermore, underlying the classification of domestic labour as unskilled is an implicit notion that anyone can

¹⁵⁶ F. Staiano, ‘Care Work in the European Court of Human Rights’ Case Law: Beyond Servitude and Forced Labour?’, in S. Mullally (ed.) *Care, Migration and Human Rights: Law and Practice* (Routledge: New York, 2015) 42.

¹⁵⁷ Anderson, ‘Good Workers, Poor Slaves’, 641.

¹⁵⁸ Anderson, *Us and Them*, 165.

¹⁵⁹ Anderson, *Doing the Dirty Work*, 8.

carry out domestic work, and domestic workers are easily replaceable. In making changes to the ODWV in 2012 the government claimed that a six-month period was long enough for a family to replace their domestic worker with a UK or EU national¹⁶⁰. This highlights the lack of regard for the role played by domestic workers in people's lives and in society. When caring for children or caring for the elderly, the intimate nature of domestic work means who carries out that work is highly significant, and the specific knowledge required to carry out this work must be gained over a period of time. To dismiss domestic workers as unskilled and replaceable is therefore to fundamentally misunderstand and under appreciate the nature of domestic labour.

The focus and shaping of immigration policy around certain types of skills as opposed to others is reflective of the rise of what has been termed the 'knowledge economy'¹⁶¹. From the 1990s the notion of the knowledge economy was taken up in public policy, and particularly in immigration policy. In the UK, the knowledge economy is seen to require skills valuable in globalised sectors, including financial services, business and technology¹⁶². Feminised sectors, such as education, social work and domestic and care work, are perceived as purely reproductive and therefore not as contributors to economic growth, the key neoliberal aim of the knowledge economy. When discussing the reforms to the immigration system, Theresa May stated the system would ensure Britain attracted "the brightest and the best"¹⁶³. This statement reveals the equivocation of work and social status that lies at the heart of the current Government's immigration policies, which preferences certain skills over others.

¹⁶⁰ Anderson, *Us and Them*, 175.

¹⁶¹ E. Kofman, 'The Knowledge Economy, Gender and Stratified Migrations', *Studies in Social Justice*, 122.

¹⁶² Kofman, 'The Knowledge Economy', 127.

¹⁶³ T. May, 'Home Secretary Speech on 'An Immigration System That Works in the National Interest''. GOV.UK. 12th December 2012. Accessed 3 August 2016. <https://www.gov.uk/government/speeches/home-secretary-speech-on-an-immigration-system-that-works-in-the-national-interest>.

The UK's current points-based immigration policy, by valuing the skills championed by the knowledge economy, has led to the admission of more male than female migrants¹⁶⁴. For Tier 1 visas two thirds of applicants are male, and 78% of applicants for Tier 2 visas are male¹⁶⁵. The focus on formal qualifications and the inability to find a means to incorporate and measure 'soft', that is, more informal, skills, favours male applicants. That the Home Office uses gendered language when describing migrants applying for Tier 1 (Entrepreneur) Visas, referring to "*his business or businesses*" and to attracting "*businessmen*", is itself reflective of the way in which these top tier visas are dominated by male applicants¹⁶⁶.

The current points-based immigration system is therefore having the real effect of discriminating against women, and particularly against women from low-income countries, by placing little value on feminised skill sectors. The lack of value assigned to domestic work means the UK immigration system has insufficient ways for MDWs to legally enter and work in the UK. This is highly problematic, as women continue to migrate in search of work, and the demand for paid domestic work in the UK and around the world continues increasing. There has been a steady increase in the percentage of women in full-time employment in the UK since the 1970s; in 2013, 67% of women aged 16-64 were working¹⁶⁷. Childcare for working mothers and families has increasingly been sold as a private, individual responsibility and state provision of childcare has not expanded at the same rate as women entering the workforce¹⁶⁸. Furthermore, we have not seen a

¹⁶⁴ A. Murray, 'Britain's Points-Based Migration System', *CentreForum*, (2010) 39.

¹⁶⁵ *ibid.*

¹⁶⁶ United Kingdom Government, 'Tier 1 (Entrepreneur) Visa'. GOV.UK. 12 August 2016. Accessed 17 August 2016. <https://www.gov.uk/tier-1-entrepreneur>.

¹⁶⁷ Office for National Statistics, 'Full Report: Women in the Labour Market', London: Office for National Statistics, 2013, 1.

¹⁶⁸ D. Ben-Galim, 'Making the Case for Universal Childcare'. Institute for Public Policy Research. 14 December 2011. Accessed 18 August 2016. <http://www.ippr.org/publications/making-the-case-for-universal-childcare>.

gendered redivision of childcare and housework accompanying the movement of women into the workforce. According to the Institute for Public Policy Research, eight out of 10 married women do more household chores than their partner, while just one in 10 married men does an equal amount of cleaning and washing as his wife¹⁶⁹. Middle-class working women therefore continue to turn to migrant women for childcare as a means to support their work out of the home.

Another aspect of the increasing demand for domestic and care workers is the ageing population of the UK, and Europe at large. Between 2015 and 2020, over a period when the general population is expected to rise 3%, the number of people aged over 65 is expected to increase by 12% (1.1 million); people aged over 85 by 18% (300,000); and the number of centenarians by 40% (7,000)¹⁷⁰. At the same time, there has also been a shift from providing public care services to the allocation of cash payments that enable people to buy in home-based care¹⁷¹. These policies have been sold as a means giving service users a greater degree on control and independence over the form of care they receive. However, at the same time these policies have created demand for a particular form of care - home-based, often low-paid, and accessed through the private market - which has been largely filled by migrant women¹⁷². The UK's policies of simultaneously outsourcing social services to the private sector whilst shutting down access to the migrants who often fill these roles are incompatible. Without sufficient avenues for entry for migrant workers working in the home, the government is creating conditions for increasing numbers of irregular migrants to be working in this sector, leaving these women vulnerable.

¹⁶⁹ Institute for Public Policy Research, 'Eight out of ten married women do more housework than their husbands'. Institute for Public Policy Research. 10th March 2012. Accessed 18 August 2016. <http://www.ippr.org/news-and-media/press-releases/eight-out-of-ten-married-women-do-more-housework-than-their-husbands>.

¹⁷⁰ United Kingdom Government, 'Political challenges relating to an ageing population: Key issues for the 2015 Parliament'. Parliament.UK. Accessed 18 August 2016. <https://www.parliament.uk/business/publications/research/key-issues-parliament-2015/social-change/ageing-population>.

¹⁷¹ F. Williams, 'Markets and Migrants in the Care Economy', *Soundings*, 47 (2011) 24.

¹⁷² Williams, 'Markets and Migrants', 25.

Extending our focus beyond an equivocation of the ODWV with modern slavery therefore reveals the wider gendered issues of the immigration system and the treatment of domestic labour within it. Gender is largely absent from the immigration debate, but a feminist analysis reveals the way in which the privileging of certain skills and occupations over others constricts the ability of women to migrate in to the UK. The modern slavery framework has allowed the state to absolve itself of responsibility for the treatment of domestic workers in the UK, placing blame at the feet of evil traffickers and modern slaveholders who are involved in this “*vile trade*”¹⁷³. This serves to naturalise the situation of domestic workers as vulnerable and fail to recognise the way in which the UK immigration regime sanctions these human rights abuses by restricting the ability of ‘low-skilled’ workers, and particularly poor women of colour, to live and work in the UK and tying those who are permitted to their employer.

By directly focusing on the ways in which the current immigration system leaves migrant women vulnerable, campaigners would force the State to recognise the nexus between immigration controls and vulnerability for migrants. This would serve to flip the current human trafficking debate on its head, and show that immigration controls are the cause and not the solution to migrant vulnerability. Campaigners employing a human rights based approach must therefore focus on demanding that the State open up migratory opportunities for domestic workers, based on both protecting workers from abuse and a greater recognition of the skills and value of domestic labour to the economic and social life of the country.

ii) Employment

Alongside focusing on the way in which the State constructs vulnerability through immigration restrictions, a human rights approach must also look at the role that employment

¹⁷³ Bradley and May, ‘Historical Law to end Modern Slavery Passed’.

protections, or lack thereof, play in human rights abuses. Groups supporting domestic workers have failed to point out that when an employer fails to pay a live-in domestic worker the minimum wage, discriminates against an undocumented worker because of her race or gender, or when a domestic worker is made to work upwards of twelve hours every day, that employer is acting within the law. As discussed in Chapter One, domestic workers in the UK lack legal protections associated with employment law. Basic labour rights such as working time regulations, health and safety regulations and, for live-in domestics, minimum wage, do not apply to domestic workers in the UK.

Domestic work is therefore characterised by legislative precariousness, that is, it is made precarious due to lack of legislative protections¹⁷⁴. The concept of precarious work has developed to refer to work that departs from the normative model of the standard employment relationship, is poorly paid and incapable of sustaining a household¹⁷⁵. It may be characterised by limited social benefits and statutory entitlements, job insecurity, low wages and high risks of ill health¹⁷⁶. Focusing on the concept of precarious work, as opposed to vulnerable domestic workers, shifts the focus from the worker onto the form of employment. Talking about vulnerable workers is highly problematic as it naturalises their state and constructs them as victims¹⁷⁷. This is even more so when used in reference to female workers and to female migrants, who are often depicted as victims without agency. Instead, highlighting the legislative precariousness of domestic work refocuses attention back onto the role of the State and the way in which it has failed to protect workers in certain sectors by ensuring decent working standards.

¹⁷⁴ Mantouvalou, 'Human Rights for Precarious Workers', 133.

¹⁷⁵ J. Fudge and R. Owens, *Precarious Work, Women and the New Economy: The Challenge to Legal Norms* (Hart Publishing: Portland, 2006) 3.

¹⁷⁶ L. F. Vosko, M. MacDonald and I. Campbell, *Gender and the Contours of Precarious Employment*, (Routledge, Oxon: 2009) 2.

¹⁷⁷ Anderson, 'Migration, Immigration Controls and the Fashioning of Precarious Workers', 303.

Transforming working conditions for domestic workers therefore requires a critical examination of precarious labour and decent work, which the modern slavery narrative actively discourages by suggesting a clear binary of slavery and freedom. As we have seen, it is questionable whether trafficking and slavery can be clearly demarcated from other violations of human and labour rights, as the experience of the vast majority of migrants lies not at these extremes, but somewhere in between¹⁷⁸. Modern anti-slavery discourse can therefore work to shut down debate by suggesting only the very worst forms of abuse count as illegitimate. A move away from the discourse of slavery to one of precariousness is one means by which to re-open the debate around exploitative labour practices and decent working standards.

A human rights approach must therefore focus reducing the precariousness of domestic labour by extending labour rights to domestic workers, and ensuring that domestic labour is legislated as real work. This would therefore entail the extension of labour law into the privacy of the home, something which has been objected to by the government. At the Universal Period Review (UPR) process at the UN, several countries recommended that the UK to ratify ILO Convention 189 that would extend labour rights to domestic workers, however the government refused¹⁷⁹. The public/private divide which has continuously prevented employment protections from being provided to domestic workers is evident in the UK's reason for refusing to ratify the convention, as the UK cited concerns over extending health and safety provisions into a private household, deeming these measures to be inappropriate within the private space of the home and describing them as “*intrusive*”¹⁸⁰. The language employed here by the Government is reflective of

¹⁷⁸ J. O'Connell Davidson, 'New Slavery, Old Binaries: : Human Trafficking and the Borders of 'Freedom'', *Global Networks*, 10 (2010) 247.

¹⁷⁹ United Nations, General Assembly, *Universal Periodic Review: Report of the Working Group on the Universal Periodic Review Great Britain and Northern Ireland*, A/HRC/21/9. 6 July 2012.

¹⁸⁰ *ibid.*

earlier debates on domestic violence, which questioned the right of the State and the police to intervene in what took place in the privacy of the home. This is distinctly gendered, and fails to take seriously human rights violations that occur outside of the public sphere. The precarious nature of domestic work therefore reflects the active failure of the State to extend the protections afforded to public workers to women in the private sphere.

Rights campaigners must therefore highlight the way in which failing to take seriously rights violations occurring in the private sphere violates international human rights norms and arguably constitutes gender discrimination. The CEDAW Committee has repeatedly pointed out that states are responsible for preventing and punishing human rights violations that occurred in private. In General Recommendation 19 on Violence Against Women, the Committee emphasises that states may be responsible for private acts if they fail to act with due diligence to prevent and punish rights violations¹⁸¹. The failure to prevent violations against MDWs in the domestic sphere by refusing to extend labour rights into this domain reveals an unwillingness to take steps to prevent violations occurring and directly violates human rights norms. A human rights-based approach must therefore focus on ensuring that domestic work is regulated as work, and that domestic workers are protected from not just the most extreme forms of exploitation, but that they are afforded labour rights equal to those extended to workers outside of the home.

Moving away from the current framework of human trafficking and modern slavery towards a human rights approach that focuses on domestic workers as agents, as opposed to victims, and the role of the state, as opposed to the employer, would serve to change the current understanding of domestic work and domestic workers. For domestic workers, it would ensure that these women are seen as legitimate rights holders and not simply as victims or objects of pity. Seeing migrant women

¹⁸¹ CEDAW Committee, *General Recommendation No.19: Violence Against Women*. Geneva: United Nations, 1992, 9.

as agents as opposed to victims will prevent the protective impulse of anti-trafficking legislation, which seeks to limit and restrict the ability of women to migrate in search of work. A human rights approach would therefore foster the opening, rather than the closing, of migratory opportunities and pathways for MDWs, who could no longer be excluded in the name of protection.

This new framework would also serve to ensure that domestic workers could no longer be dismissed as servants, helpers or ‘members of the family’, or that their work could be seen as having little value. Expanding labour rights to domestic workers in the private sphere and remedying the precariousness of domestic labour shows that work carried out by women in the home is real work and should be protected as such. Challenging perceptions of domestic work as ‘dirty work’ and recognising the value of this labour will also further the feminist agenda of breaking down the dichotomy between the public and the private, the productive and the reproductive, which has long served to treat women and their labour as second class. As such, this new understanding of domestic work will have emancipatory potential for all women who carry out domestic work through a recognition of work in the home as real work.

As well as ensuring that domestic workers are recognised as agents, and domestic work as valuable, this new approach will serve to expand the scope of human rights beyond moments of crisis and incidences of extreme exploitation towards the more everyday. The everyday gendered harms that MDWs face, such as lack of employment protections, have gained little attention and have been overshadowed by the focus on modern slavery and human trafficking. However, human rights law must strive to move beyond simply addressing the very worst forms of harm in order to realise its transformative promise. Moving away from the modern slavery paradigm and towards a human rights approach when campaigning for justice for MDWs will ensure that all forms of harm against domestic workers are recognised and taken seriously as human rights violations.

Conclusion

This paper has highlighted the way in which the current immigration and employment regime in the UK fails to protect the rights of domestic workers, through an immigration system that ties domestic workers to their employer and fails to offer other means of entrance, and an employment regime that does not recognise domestic work as ‘real’ work. However, it has argued that the current response from campaigners has failed to create conditions where rights for domestic workers may be expanded, but, rather, by framing domestic work as a form of modern slavery, has reinforced the perception of female migrants as victims who must be excluded for their own protection. Domestic workers are presented as victims and as slaves, not as rights-holders who make an invaluable contribution to the economy and society at large. This paper has attempted to reframe rights for MDWs, moving away from the narrow focus on severe exploitation and slavery, and formulate a response that is truly grounded in the principles of human rights. This approach highlights the strength and activism of domestic workers, and focus on the role and responsibility of the state to prevent human rights abuses occurring within the private sphere of the home.

The human rights abuses MDWs face are by no means limited to the UK. By focusing on the situation in the UK, this paper hopes to highlight issues that are faced by domestic workers around the world. Despite variations in their situations, domestic workers worldwide continue to face common issues relating to their isolation, invisibility and lack of recognition and regulation resulting in precariousness. Globally, only twenty-two countries have ratified ILO Convention 189, many of which are countries that send, rather than receive, large numbers of MDWs, such as the Philippines and nations in South America¹⁸². Domestic work therefore remains under-regulated and domestic workers under-appreciated both locally and internationally.

¹⁸² International Labour Organisation, ‘Ratifications of C189 - Domestic Workers Convention, 2011’. International Labour Organisation. Accessed 24 August 2016. http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO::P11300_INSTRUMENT_ID:2551460.

Furthermore, the problematic nature of the trafficking and slavery paradigm is a global issue and not limited to domestic workers. As discussed, migrant receiving countries around the world have been all too quick to take up these issues, and have consistently used the justification of preventing human trafficking into modern slavery as a reason for excluding migrants in the name of protecting them from harm. In relation to the current refugee crisis in Europe, the head of Europol has warned of organised criminal gangs preying on vulnerable refugees and forcing them into modern slavery, and accumulating a \$6 billion profit in the process¹⁸³. The suggested response is to shut down migrant smuggling networks to prevent these criminal gangs from operating. However, with 90% of refugees who enter Europe using some form of facilitator, from document forgers to people smugglers, closing down these networks would effectively prevent refugees from entering the EU completely¹⁸⁴. The trafficking and slavery paradigm has therefore seen States cynically co-opting human rights language to shut down space for migrants to claim rights, and prevent them from entering their country. We must therefore move away from this frame to ensure that States recognise the nexus between restrictive immigration policies and vulnerability.

Organisations such as Kalayaan, Liberty and Anti-Slavery International share in the goal of advancing rights and justice for MDWs in the UK. Engaging with the modern slavery paradigm appeared as the most effective way of achieving this aim, given the current hostility towards migrants and harsh tone of the immigration debate. However, this goal appears to be moving further and further out of sight, as domestic workers continue to be subjected to an immigration system which ties them to their employer and restricts their means of entrance, and an employment regime which fails to see their work as real work. Successfully moving towards a human rights-based framework would ensure MDWs are recognised as rights-holders in the eyes of the State, which

¹⁸³ Europol and Interpol, *Migrant Smuggling Networks: Joint Europol-INTERPOL Report: Executive Summary, May 2016*. Europol and Interpol: 2016, 4.

¹⁸⁴ *ibid.*

would no longer be able to shy away from its duties and responsibilities to respect and protect the rights of these workers.

A human rights approach has the potential to transform the situation of MDWs by addressing the overlapping axes of discrimination of gender, ethnicity, employment and migration status. However the stereotypical portray of the ‘victim subject’ of modern slavery and anti-trafficking legislation has limited the transformative potential of human rights by stripping domestic workers of their agency and justifying their exclusion on the basis of protection. Campaigners must reclaim the language of human rights from this paradigm and enact a new approach, which truly focuses on expanding migratory opportunities for women and breaking down the public/private divide by recognising work taking place in the home as a invaluable to society.

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